TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 470

THE UNITED STATES, APPELLANT

vs.

JOHN J. MITCHELL ET AL. AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF DELLORA R. GATES, DECEASED

APPEAL FROM THE COURT OF CLAIMS

FILED MAY 14, 1926

(31184)

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INDEX

In Court of Claims

JOHN J. MITCHELL, AUGUSTINE L. HUMES, AND CHARLES E. Herrmann, as executors of the last will and testament of Dellora R. Gates, deceased vs. THE UNITED STATES	No. C–1279

I. Petition

(Filed December 6, 1923)

To the Honorable the Chief Justice and Judges of the Court of Claims:

The claimants, John J. Mitchell, Augustine L. Humes, and Charles E. Herrmann, as executors of the last will and testament of Dellora R. Gates, deceased, file this their petition in the above-entitled cause and respectfully represent to this honorable court as follows:

FOR A FIRST CLAIM, CAUSE OF ACTION, AND GROUND OF SUIT

I

The claimants, John J. Mitchell, Augustine L. Humes, and Charles E. Herrmann, are executors of the last will and testament of Dellora R. Gates, deceased.

II

The said John J. Mitchell, Augustine L. Humes, and Charles E. Herrmann are each and all citizens of the United States, the said John J. Mitchell being a resident of the city of Chicago, county of Cook, and State of Illinois; the said Augustine L. Humes being a resident of the borough of Spring Lake, county of Monmouth, and State of New Jersey; and the said Charles E. Herrmann being a resident of the village of Scarsdale, county of Westchester, and State of New York, and each and all of them have at all times borne true allegiance to the Government of the United States and have not in any way aided, abetted, or given encouragement to rebellion against the said Government, or at any time aided or abetted in any manner or given comfort to any sovereign or government that is or ever has been at war with the United States.

III

Dellora R. Gates was a citizen of the United States and resided at Port Arthur, Jefferson County, and State of Texas, and died at the Hotel Plaza, in the city, county, and State of New York, on the 28th day of November, 1918. The said Dellora R. Gates had at all times prior to her death borne true allegiance to the Government of the United States and had not in any way aided, abetted, or given en-

couragement to rebellion against the said Government, or at any time aided or abetted in any manner or given comfort to any sovereign or government that is or ever has been at war with the United States.

3

IV

The said Dellora R. Gates died leaving a last will and testament with codicil thereto, which will and codicil were duly probated in the County Court of Jefferson County, State of Texas, on January 6, 1919, and letters testamentary thereon were issued to said executors by said County Court on the 6th day of January, 1919, and the said executors thereupon duly qualified as such, and said appointment of said executors still remains in full force and effect. A certified copy of said last will and testament and codicil thereto and of said letters testamentary are annexed hereto, made a part hereof and marked Exhibit "A." Your petitioners have been continuously executors of the said estate from the time of the issuance of said letters testamentary down to the time of the filing of this petition.

V

The said Dellora R. Gates in and by said will and codicil made certain money bequests to legatees and made certain specific bequests and devises to certain legatees and devisees, bequeathing and devising to them certain personal and real property, which property was not income-producing and produced no income during the year 1919. All the rest and residue of the property, both real, personal, and mixed of every kind and character of which said Dellora R. Gates, deceased, was seized and possessed, was bequeathed and devised by a general legacy and devise by said Dellora R. Gates to trustees in trust, the net income to be paid over as provided in article

4 "fifty-first" of the said last will and testament, a copy whereof is annexed hereto and marked Exhibit "A." Dellora F. Angell (now Dellora A. Norris) and Edward J. Baker, the persons named in said article "fifty-first," were both living at the death of the said Dellora R. Gates, and are both living at the present time.

VI

The said executors, in their capacity as executors of the estate of said Dellora R. Gates, during the year 1919 and prior to the 31st day of December, 1919, collected all the income and earnings on and from the property and assets of the said estate of Dellora R. Gates, all of said income and earnings collected being collected from stock, bonds, choses in action, and personal property, except that $272.15 of said income so collected was collected from real property, and none of said income or earnings was collected from property specifically bequeathed or devised by said will or codicil of said Dellora R. Gates, deceased. Of said income and earnings so collected by said executors the sum of $75,033.97 was applied by them for the sup-

port, education, and maintenance of Dellora F. Angell, in accordance with the provisions of Subdivision "I" of article "fifty-first" of the said last will and testament, and all the remainder of said income and earnings so collected by said executors was used and applied by them in their capacity as such executors in and towards the payment to the United States of the "estate tax" (imposed by the act of September 8, 1916, and amendments thereto by the acts
5 of March 3, 1917, and October 3, 1917) and other valid claims or charges against said estate.

The gross amount of income received by the executors from the said estate for the year 1919 was less than the amount of the said "estate tax" paid by them to the United States.

In conformity with the practice and rules and regulations of the Treasury Department under sections 223–225 of the revenue act of 1918, the said executors, during the year 1920 and within the time prescribed by law, and on March 14, 1920, made and filed with the collector of internal revenue at Albany, New York, a return of all the income received during the year 1919 by said executors in their capacity as executors of the estate of said Dellora R. Gates, deceased. In said income tax return said executors did not claim a deduction under the provisions of section 214 of the revenue act of 1918 for the whole or any part of the sum of $2,927,762.64, which was the amount of "estate tax" payable by and chargeable against said estate as shown by the return for "estate tax" filed by said executors on or about the 26th day of November, 1919, with the collector of internal revenue for the district in which Port Arthur, Texas, is situated, and of which amount of "estate tax" $1,000,000 was paid by said executors to said collector on the 25th day of February, 1920, and the balance of which amount of "estate tax" was
6 paid by said executors to said collector on the 27th day of May, 1920. Said executors did not claim a deduction for said amount of "estate tax" for the reason that the regulations and rulings of the Commissioner of Internal Revenue and the Secretary of the Treasury, and among others, article 134 of regulations 45, forbade and refused to allow any deduction of any part of the "estate tax" upon the said estate.

At the time when in the year 1920 the executors made and filed as aforesaid their said return of income received and collected by them as such executors during the year 1919, the regulations and rulings of the Commissioner of Internal Revenue and the Secretary of the Treasury forbade and refused to allow any deduction from said income so received and collected during the year 1919 of any part of the "estate tax" upon said estate, and neither the decision of the Court of Claims nor the decision of the Supreme Court of the United States in the case of United States v. Woodward, 256 U. S. 632, had been rendered. The income tax computed upon the amount of income received by said executors as set forth in their said return, without making any deduction for "estate tax," amounted to the sum of $905,225.73. A copy of said income tax return is, together

with the instructions printed on the return, hereto annexed, made a part hereof and marked Exhibit "B." The said executors on or about March 15, 1920, made payment, under protest, of the first quarterly installment of the said sum of $905,225.73 in order to

7 avoid the imposition of penalties and interest by the Commissioner of Internal Revenue and the Collector of Internal Revenue at Albany, New York, and to avoid distraint or other summary proceedings or other proceedings for the enforcement and collection of taxes consequent upon the failure or refusal to pay the tax as computed in accordance with the said regulations and rulings. Thereafter pursuant to said regulations and rulings and in accordance with the practice of the Treasury Department in such cases the collector of internal revenue at Albany, New York, made three several demands on the said executors for the payment of the second, third, and fourth quarterly installments of said tax, respectively. In order to avoid the imposition of penalties and interest by the Commissioner of Internal Revenue and the collector of internal revenue at Albany, New York, and to avoid distraint or other summary proceedings or other proceedings for the enforcement and collection of the taxes consequent upon failure or refusal to pay the tax in accordance with said regulations, rulings, and demands, said executors made the payments, under protest, of the second, third, and fourth quarterly installments of the said tax for the year 1919 amounting in the aggregate to a total of $678,919.30, which, together with the first quarterly installment, amounted in the aggregate to a total sum of $905,225.73; that the said second, third, and fourth quarterly installments were paid to the collector of internal revenue at Albany, New York, in equal quarterly payments on or about the fifteenth days of June, September, and December, respectively, in the year 1920.

8 VII

On January 6, 1922, said executors duly filed an application with the collector of internal revenue at Albany, New York, praying for the refund of all of said income tax for the year 1919 so paid, on the ground that the "estate tax" was deductible in computing said income tax. Said application for refund was in all respects complete, regular, and in due form, but was denied and rejected by the Commissioner of Internal Revenue and the Secretary of the Treasury, who still deny and refuse to pay said executors the money asked for and demanded in said application.

VIII

The said sum of $905,225.73 so paid by said executors as and for a tax as aforesaid was received and is still retained by the United States.

IX

The said executors in their capacity as such are the sole owners of the claim sued upon herein and no assignment or transfer of said claim or any part thereof or any interest therein has been made.

X

No action upon this claim other than as herein set forth has been taken before Congress or other of the departments of the Government or in any court other than the petition filed in this court.

XI

On or about the 14th day of February, 1923, the Commissioner of Internal Revenue, acting of his own motion and not in respect of any claim filed by the said executors, notified the said executors that the "estate tax" paid as aforesaid had been allowed as a deduction in computing the income tax payable with respect to the income of said estate received during the year 1920, and offered to remit the taxes with respect to said income received during the year 1920 so far as said taxes had not been paid, and to refund such part of said taxes as had been paid, but the said executors refused and still refuse to accept such application of said "estate tax," or remission or refund of said taxes in respect of income received during the year 1920, or any part thereof, and then demanded and still do demand that said "estate tax" be allowed as a deduction in computing the tax payable in respect of income received during the year 1919.

XII

If said "estate tax" paid as aforesaid had been allowed as a deduction in computing the tax payable with respect to the income received during the year 1919, neither your petitioners as executors as aforesaid, nor said estate, would have been liable for or chargeable with any income tax on said return of income received during the year 1919, and no assessment of income of $905,225.73, or any other sum would have been made against either your petitioners as such executors or against said estate.

XIII

Your petitioners, John J. Mitchell, Augustine L. Humes, and Charles E. Herrmann, in their capacity as executors of Dellora R. Gates, deceased, aver that there is now justly due and owing to them as such executors by the United States the said sum of $905,225.73; that against said amount the United States are entitled, for the purposes of this suit, to an offset in the sum of

$381,931.57 for unpaid income tax in respect of income received during the year 1920, and that petitioners in their capacity as executors as aforesaid are justly entitled to the sum of $323,294.16 from the United States, after allowing all just credits and offsets.

FOR A SECOND AND INDEPENDENT CLAIM, CAUSE OF ACTION, AND GROUND OF SUIT

XIV

The claimants, John J. Mitchell, Augustine L. Humes, and Charles E. Herrmann, in their capacity as executors of Dellora R. Gates, deceased, repeat and reallege each and every statement and allegation set forth in the paragraphs of this petition numbered "I," "II," "III," "IV," "V," and "VI" as if the same had been fully and at length set forth herein.

XV

In the income tax return filed in 1920 of income received during the year 1919, as set forth in paragraph "VI" of this petition, a copy of which return, together with the instructions printed on the return, is annexed hereto, made a part hereof and marked "Exhibit B," said executors did not claim any deduction under the
11 provisions of section 214 of the revenue act of 1918 for any inheritance tax, for the reason that the regulations and rulings of the Commissioner of Internal Revenue and the Secretary of the Treasury, and, among others, article 134 of regulations 45, forbade and refused to allow any deduction of any part of the inheritance taxes upon the said estate.

XVI

During the year 1919 there became due and payable by the executors of the estate of Dellora R. Gates the inheritance tax imposed by the State of Texas, amounting to the sum of $357,739.34, which sum the executors paid to the State of Texas on the 27th day of May, 1919. By the terms of the will of the said Dellora R. Gates the executors were required to pay said inheritance tax from the residuary estate, which was bequeathed and devised in trust as aforesaid. By the laws of the State of Texas the said executors were required to pay said inheritance tax and were subject to statutory penalties for noncompliance with the said requirement and to liability for said tax. In the income-tax return aforesaid the executors did not claim a deduction for the said sum of $357,739.34, for the reason that the regulations and rulings of the Commissioner of Internal Revenue and the Secretary of the Treasury forbade and refused to allow any deduction for any part of said inheritance tax. Said inheritance tax was paid to the State of Texas on the respective legacies and devises set forth in the will, and the amount thereof was paid out of and deducted from the residuary estate.

XVII

At the time when in the year 1920 the executors made and filed their said return of income received and collected by them as such executors during the year 1919 the regulations and rulings of the Commissioner of Internal Revenue and the Secretary of the Treasury forbade and refused to allow any deduction from said income so received and collected during the year 1919 for any part of any inheritance tax paid upon or in respect of said estate or any part thereof.

XVIII

On January 6, 1922, said executors duly filed an application with the collector of internal revenue at Albany, New York, praying for the refund of said income tax for the year 1919 paid as set forth in paragraph "VI" of this petition, on the ground that said inheritance tax paid to the State of Texas was deductible in computing said income tax. Said application for refund was in all respects complete, regular, and in due form, but was denied and rejected by the Commissioner of Internal Revenue and the Secretary of the Treasury, who still deny and refuse to pay said executors the money asked for and demanded in said application.

XIX

The said sum of $905,225.73 so paid by said executors as and for said tax as aforesaid was received and is still retained by the United States.

XX

The said executors in their capacity as such are the sole owners of the claim sued upon herein and no assignment or transfer of said claim or any part thereof or any interest therein has been made.

XXI

If said inheritance tax paid as aforesaid to the State of Texas had been allowed as a deduction in computing the income tax payable with respect to the income received during the year 1919 as aforesaid, said income tax would have been reduced (independently of the "First claim, cause of action, and ground of suit" set forth in this petition) by the sum of $261,149.72.

XXII

No action upon this claim other than herein set forth has been taken before Congress or other of the departments of the Government or in any court other than the petition filed in this court.

XXIII

Your petitioners, John J. Mitchell, Augustine L. Humes, and Charles E. Herrmann, in their capacity as executors of Dellora R. Gates, deceased, aver that there is now justly due and owing to them in their capacity as executors as aforesaid by the United States the said sum of $261,149.72, and that petitioners in their capacity as executors as aforesaid are justly entitled to the said amount from the United States, after allowing all just credits and offsets.

Wherefore, your petitioners pray for judgment against the
14 United States for the said sum of $523,294.16, with interest on $226,306.43 thereof from the 15th day of March, 1920; on $226,306.43 thereof from the 15th day of June, 1920; and on the remainder thereof, namely, $70,681.30, from the 15th day of September, 1920.

JOHN J. MITCHELL,
AUGUSTINE L. HUMES,
CHARLES E. HERRMANN,
As Executors of the Last Will and Testament of Dellora R. Gates, Deceased.
By HUMES, BUCK & SMITH,
Attorneys.

[Sworn to by Augustine L. Humes; jurat omitted in printing.]

15 *Exhibit "A" to petition*

ORDER PROBATING WILL AND APPOINTING APPRAISERS

STATE OF TEXAS,
County of Jefferson.

In the County Court of Jefferson County, Texas, January 6th, 1919.

On this day in open court came on to be heard the petition of John J. Mitchell, Augustine L. Humes, and Charles E. Herrmann filed herein on the 10th day of December, 1918, for the probate of the will of Dellora R. Gates, deceased, bearing date the 20th day of September, 1918, and of a codicil thereto bearing date the 20th day of September, 1918: and,

It appearing to the court, and the court so finds, that said Dellora R. Gates is now dead; that in her lifetime and at the time of her death she was a resident citizen of Port Arthur, in the county of Jefferson, and in the State of Texas, having her home therein, and that a part of her estate is located in said county, and that this court has jurisdiction of said estate; and,

It further appearing to the court, and the court so finds, that citation has heretofore been seasonably issued and seasonably served

and returned in the manner and for the length of time required by law, so as to justify the hearing of said application at this time; and,

It further appearing to the court from the testimony of Wm. J. Flanagan and Edward M. Crone, two of the three subscribing witnesses of said will dated September 20th, 1918, and of Wm. J. Flanagan and Edward M. Crone, two of the three subscribing witnesses to said codicil dated the 20th day of September, 1918, each of said witnesses having been sworn and examined and his examination having been reduced to writing and subscribed by him in open court and filed, and the court so finds, that said will and said codicil collectively constitute the last will and testament of said Dellora R. Gates, deceased: and,

It further appearing to the court, and the court so finds, that both of said documents were duly and legally executed by said Dellora R. Gates, deceased, in her lifetime and at the respective dates thereof, with all of the formalities and solemnities and under all of the circumstances required by the law of Texas to make and constitute said documents collectively the valid last will and testament of said deceased, and that said testatrix at the respective times of execution of said documents was at least twenty-one years of age, and was of sound mind, and was in all respects competent to make a will and under no restraint; and the court being satisfied of the genuineness of said documents and of the validity of the execution thereof, and the probate thereof not having been contested: and,

It further appearing to the court and the court so finds that said codicil has not been revoked or modified by said testatrix, and that said will has not been revoked or modified by said testatrix except as same was revoked or modified by the provisions of said codicil:

Now, therefore, it is ordered, adjudged, and decreed by the court that said will dated the 20th day of September, 1918, and said codicil dated the 20th day of September, 1918, offered for probate herein collectively, constitute the last will and testament of said Dellora R. Gates, deceased, and is hereby admitted to probate as the last will and testament of said Dellora R. Gates, deceased, valid to pass real and personal property: and,

It is further considered, ordered, adjudged, and decreed by the court that it is adequately provided in said last will and testament that no other action shall be had in the County Court in relation to the settlement of said estate than the probating and recording of said last will and testament and the return of an inventory appraisement and list of claims of said estate, and that said John J. Mitchell, Augustine L. Humes, and Charles E. Herrmann are named in said last will and testament as the independent executors of said estate, and they are hereby appointed independant executors thereof, and as directed by the terms of said last will and testament, they are

exempt from the giving of any bond as such and letters testamentary shall forthwith issue accordingly; and,

It is further considered, ordered, adjudged, and decreed by the court that the testimony of the witnesses William J. Flanagan, Edward M. Crone, Charles E. Herrmann, I. Freundlich, and R. H. Woodworth, as taken in open court, together with
18 Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, and all other documentary evidence offered and received upon this proceeding be and the same are hereby accepted and approved and ordered to be recorded together with the petition herein and the citation and return thereon, as a part of the record in this proceeding; and,

It is further considered, ordered, adjudged and decreed by the court that said will and said codicil be and they hereby are adopted and made a part of this decree and are set forth in full and are as follows, to wit:

LAST WILL AND TESTAMENT OF DELLORA R. GATES, DECEASED (WITH CODICIL)

Dated September 20, 1918

I, Dellora R. Gates, a resident and citizen of the State of Texas, having my home at Port Arthur, county of Jefferson, in said State, being of sound mind and memory, do hereby make, publish, and declare this document as and for my last will and testament, hereby revoking all and every other will and testamentary expression or disposition by me at any time heretofore made.

First. I direct that all my just debts shall be paid as soon as expedient after my death, and to this end my executors hereinafter named are given power and authority to use and appropriate for that purpose any cash that may be on hand after my death and to sell and convert into cash at public or private sale any and all real
19 property, personal property, stocks, bonds, and other securities such as may constitute a part of my estate not hereinafter specifically bequeathed or devised.

Second. I give and bequeath to Harriet R. Baker, wife of my Brother, Edward J. Baker, of St. Charles, Illinois, if she be living at the time of my death, the sum of one hundred and fifty thousand dollars ($150,000).

Third. I give and bequeath to Nina Baker, widow of my nephew Henry R. Baker, if she be living at the time of my death, the sum of fifty thousand dollars ($50,000).

Fourth. I give and bequeath to my friend Elizabeth S. Gurney, if she be living at the time of my death, the sum of twenty-five thousand dollars ($25,000).

Fifth. I give and bequeath to Marie Brownson, of Dubuque, Iowa, if she be living at the time of my death, the sum of fifty thousand dollars ($50,000).

Sixth. I give and bequeath to my brother-in-law, Frank R. Angell, of St. Charles, Illinois, if he be living at the time of my death, the sum of fifty thousand dollars ($50,000).

Seventh. I give and bequeath to Esther Angell, wife of my brother-in-law, Frank R. Angell, of St. Charles, Illinois, if she be living at the time of my death, the sum of twenty-five thousand dollars ($25,000).

Eighth. I give and bequeath to Florence Hopwood Judd, of Minneapolis, Minnesota, if she be living at the time of my death, the sum of twenty-five thousand dollars ($25,000).

Ninth. In case Dellora LaGrone shall be living at the time of my death and shall then have attained the age of twenty-one (21) years, I give and bequeath to her the sum of two thousand five hundred dollars ($2,500). In case she shall be living at the time of my death but at that time shall not attained the age of twenty-one (21) years, I give and bequeath to my executors and trustees hereinafter named the sum of two thousand five hundred dollars ($2,500), in trust, to collect the rents, income, and profits thereof and to apply the same, or such portion thereof as my said executors and trustees may deem advisable, for the education, support, and maintenance of said Dellora LaGrone until she shall attain the age of twenty-one (21) years and thereupon to pay the principal over to her, together with any accumulated income thereof.

In case said Dellora LaGrone shall survive me but shall die before she becomes twenty-one (21) years of age, I direct that the principal of said trust fund of two thousand five hundred dollars ($2,500), together with any accumulated income thereof, shall become and constitute part of my residuary estate and become subject to the provisions hereinafter contained concerning my said residuary estate.

Tenth. In case Dellora Reeve, the daughter of Dr. O. C. Reeve, of New York City, shall be living and shall have attained the age of twenty-one (21) years at the time of my death, I give and bequeath to her the sum of two thousand five hundred dollars ($2,500). In case she shall be living but shall not have attained the age of twenty-one (21) years at the time of my death, I give and bequeath to my executors and trustees hereinafter named the sum of two thousand five hundred dollars ($2,500), in trust, to collect the rents, income, and profits thereof and to apply the same, or such portion thereof as they may deem advisable, for the education, support, and maintenance of said Dellora Reeve until she shall attain the age of twenty-one (21) years, and thereupon to pay, transfer, deliver, and convey the principal over to her, together with any accumulated income thereof.

In case said Dellora Reeve shall survive me but shall die before she becomes twenty-one (21) years of age, I direct that the principal of said trust fund of two thousand five hundred dollars ($2,500), together with any accumulated income thereof, shall be-

come and constitute a part of my residuary estate and become subject to the provisions hereinafter contained concerning my said residuary estate.

Eleventh. In case Dellora Nyilas, the daughter of Francis Nyilas, of New York City, shall be living and shall have attained the age of twenty-one (21) years at the time of my death, I give and bequeath to her the sum of two thousand five hundred dollars ($2,500). In case she shall be living but shall not have attained the age of twenty-one (21) years at the time of my death, I give and
22 bequeath to my executors and trustees hereinafter named the sum of two thousand five hundred dollars ($2,500), in trust, to collect the rents, income, and profits thereof and to apply the same, or such portion thereof as they may deem advisable, for the education, support, and maintenance of said Dellora Nyilas until she shall have attained the age of twenty-one (21) years, and thereupon to pay, transfer, deliver, and convey the principal over to her, together with any accumulated income thereof.

In case said Dellora Nyilas shall survive me but shall die before she becomes twenty-one (21) years of age, I direct that the principal of said trust fund of two thousand five hundred dollars ($2,500), together with any accumulated income thereof, shall become and constitute a part of my residuary estate and become subject to the provisions hereinafter contained concerning my said residuary estate.

Twelfth. I give and bequeath to Sarah A. Scott, of New York City, if she be living at the time of my death, the sum of ten thousand dollars ($10,000).

Thirteenth. I give and bequeath to May Scott Wheeler, if she be living at the time of my death, the sum of five thousand dollars ($5,000).

Fourteenth. I give and bequeath to Mary H. King, of St. Louis, Missouri, if she be living at the time of my death, the sum of five thousand dollars ($5,000).

23 Fifteenth. I give and bequeath to R. Alice Humes, of New York City, if she be living at the time of my death, the sum of ten thousand dollars ($10,000). In case said R. Alice Humes shall not be living at the time of my death, I direct my executors and trustees hereinafter named to divide the said sum of ten thousand dollars ($10,000) into such number of separate parts as shall be equal to the number of children of Katharine H. Winter, of Orange, New Jersey, me surviving, and to pay, transfer, deliver, and convey to each of such children as shall have attained the age of twenty-one (21) years at the time of my death one of such separate parts and to hold the remaining separate parts, or all thereof, in case no such child shall have attained the age of twenty-one (21) years at the time of my death, in trust, nevertheless, to collect the rents, income, and profits thereof and to apply the rents, income, and profits upon one of such separate parts, or such portion thereof as they may deem advisable, for the education, support, and maintenance of each such

hild as shall not have attained the age of twenty-one (21) years t the time of my death until such child shall attain the age of wenty-one (21) years and thereupon to pay, transfer, deliver, and onvey the principal of one such separate part to each such child s shall attain the age of twenty-one (21) years, together with any ccumulated income thereof; provided that if any such child shall ie prior to attaining the age of twenty-one (21) years without ssue, the share of such child so dying, together with the rents, in- ome, and profits thereof theretofore accumulated and thereafter accruing thereon, shall be divided equally among the surviving children, me surviving, of said Katharine H. Winter, and shall be dealt with, applied, and disposed of in accordance with the provisions herein contained with reference to the shares of such survivors and their issue and in like manner, including the further provision that in the event that any such child of Katharine H. Winter, me surviving, shall die prior to attaining the age of twenty-one (21) years, leaving issue, then the share of such child so dying shall be divided equally among such issue.

If said R. Alice Humes shall not be living at the time of my death, and there shall not then be living any child or children of said Katharine H. Winter, or in the event that no such child, me surviving, shall attain the age of twenty-one (21) years, I direct that the principal of said sum of ten thousand dollars ($10,000), together with any accumulated income thereof, shall become and constitute a part of my residuary estate and become subject to the provisions hereinafter contained concerning my said residuary estate.

Sixteenth. As a mark of my high regard, I give and bequeath to John J. Mitchell, of Chicago, Illinois, if he be living at the time of my death, James C. Hutchins, of Chicago, Illinois, if he be living at the time of my death, and R. H. Woodworth, of Port Arthur, Texas, if he be living at the time of my death, the sum of five thousand dollars ($5,000) each.

Seventeenth. I give and bequeath to Agnes Jones, wife of Herbert L. Jones, of New York City, if she be living at the time of my death, the sum of five thousand dollars ($5,000), and if she be not living at the time of my death then I give and bequeath said sum of five thousand dollars ($5,000) to said Herbert L. Jones.

Eighteenth. I give and bequeath to George C. Scott, son of said Sarah A. Scott, if he be living at the time of my death, the sum of five thousand dollars ($5,000). In case said George C. Scott shall not be living at the time of my death but shall leave any child or children who shall be living at the time of my death, I direct my executors and trustees hereinafter named to divide said sum of five thousand dollars ($5,000) into such number of separate parts as shall be equal to the number of such children of said George C. Scott, me surviving, and to pay, transfer, deliver and convey to each of such children as shall have attained the age of twenty-one (21) years at the time of my death one of such separate parts and to hold

the remaining separate parts, or all thereof, in case no such chi
shall have attained the age of twenty-one (21) years at the time
my death, in trust, nevertheless, to collect the rents, income, a
profits thereof and to apply the rents, income, and profits upon
of such separate parts, or such portion thereof as they may de
advisable, for the education, support, and maintenance of each su
child as shall not have attained the age of twenty-one (21) years
the time of my death, until such child shall attain the age of twen
one (21) years, and thereupon to pay, transfer, deliver, and conv
the principal of one such separate part to each such child
26 shall so attain the age of twenty-one (21) years, together wi
any accumulated income thereof: provided that if any such chi
shall die prior to attaining the age of twenty-one (21) years wit
out issue, the share of such child so dying, together with the ren
income, and profits thereof theretofore accumulated and thereaft
accruing thereon, shall be divided equally among the surviving ch
dren, me surviving, of said George C. Scott and shall be dealt wit
applied, and disposed of in accordance with the provisions here
contained with reference to the shares of such survivors and the
issues and in like manner, including the further provision that
the event that any such child of George C. Scott, me surviving, sha
die prior to attaining the age of twenty-one (21) years leavi
issue, then the share of such child so dying shall be divided equal
among such issue.

In the event that said George C. Scott shall not be living at t
time of my death and shall leave no child who shall survive me w
shall attain the age of twenty-one (21) years, I direct that said su
of five thousand dollars ($5,000), together with any accumulate
income thereof, shall form and constitute a portion of my residua
estate and shall be held and disposed of according to the provisio
hereinafter contained concerning my said residuary estate.

Nineteenth. I give and bequeath to my executors and truste
hereinafter named the sum of five thousand dollars ($5,000), i
trust, nevertheless, to collect the rents, income, and profits there
and to apply the same for the education, support, and maint
27 tenance of John Tennent, the son of said May Scott Wheele
until he shall attain the age of twenty-five (25) years, a
then to pay the principal of said trust fund of said five thousa
dollars ($5,000) to said John Tennent. In case said John Tenne
shall died prior to attaining the age of twenty-five (25) years,
direct that the principal of said trust fund of five thousand dolla
($5,000) shall become and constitute a part of my residuary esta
and become subject to the provisions hereinafter contained concer
ing my said residuary estate.

Twentieth. I give and bequeath to John Gates Williams, of S
Louis, Missouri, if he be living at the time of my death, the sum
five thousand dollars ($5,000).

Twenty-first. I give and bequeath to Charles E. Herrmann, of Scarsdale, N. Y., if he be living at the time of my death, the sum of twenty-five thousand dollars ($25,000). In case said Chas. E. Herrmann shall not be living at the time of my death but shall leave any child or children who shall be living at the time of my death, I direct my executors and trustees hereinafter named to divide the sum of twenty-five thousand dollars ($25,000) into such number of separate parts as shall be equal to the number of such children of said Charles E. Herrmann, me surviving, and to pay, transfer, deliver, and convey to each of such children as shall have attained the age of twenty-one (21) years at the time of my death one of such separate parts and to hold the remaining separate parts, or all thereof, in case no such child shall have attained the age of twenty-one (21) years at the time of my death, in trust, nevertheless, to collect the rents, income, and profits thereof and to apply the rents, income, and profits upon one of such separate parts, or such portion thereof as they may deem advisable, for the education, support, and maintenance of each such child as shall not have attained the age of twenty-one (21) years at the time of my death, until such child shall attain the age of twenty-one (21) years, and thereupon to pay, transfer, deliver, and convey the principal of one such separate part to each such child as shall so attain the age of twenty-one (21) years, together with any accumulated income thereof; provided that if any such child shall die prior to attaining the age of twenty-one (21) years without issue, the share of such child so dying, together with the rents, income, and profits thereof theretofore accumulated and thereafter accruing thereon, shall be divided equally among the surviving children, me surviving, of said Chas. E. Herrmann and shall be dealt with, applied, and disposed of in accordance with the provisions herein contained with reference to the shares of such survivors and their issue and in like manner, including the further provision that in the event that any such child of Charles E. Herrmann, me surviving, shall die prior to attaining the age of twenty-one (21) years leaving issue, then the share of said child so dying shall be divided equally among such issue.

In case said Charles E. Herrmann shall die prior to the time of my death leaving no children who shall survive me, or in the event that no child of said Charles E. Herrmann, me surviving, shall attain the age of twenty-one (21) years, then I give and bequeath said sum of twenty-five thousand dollars ($25,000), together with any accumulated income thereof, to his wife, Sarah Herrmann, if she be living at the time of my death, but if she be not living, then I direct that the same shall form and constitute part of my residuary estate and shall be held and disposed of according to the provisions hereinafter contained concerning my residuary estate.

Twenty-second. I give and bequeath to Fellowes Davis, jr., New York City, if he be living at the time of my death, the s of ten thousand dollars ($10,000). In case said Fellowes Davis, shall not be living at the time of my death but shall leave any ch or children who shall be living at the time of my death, I direct executors and trustees hereinafter named to divide the sum of thousand dollars ($10,000) into such number of separate parts shall be equal to the number of such children of said Fellow Davis, jr., me surviving, and to pay, transfer, deliver, and conv to each of such children as shall have attained the age of twenty-(21) years at the time of my death one of such separate parts a to hold the remaining separate parts, or all thereof, in case no su child shall have attained the age of twenty-one (21) years at time of my death, in trust, nevertheless, to collect the rents, incom and profits thereof and to apply the rents, income, and profits up one of such separate parts, or such portion thereof as they m deem advisable, for the education, support, and maintenan
30 of each such child as shall not have attained the age of twen one (21) years at the time of my death, until such child sh attain the age of twenty-one (21) years and thereupon to pa transfer, deliver, and convey the principal of one such separate pa to each such child as shall so attain the age of twenty-one (21) yea together with any accumulated income thereof: provided that if a such child shall die prior to attaining the age of twenty-one (2 years without issue, the share of such child so dying, together wi the rents, income, and profits thereof theretofore accumulated a thereafter accruing thereon shall be devided equally among the su viving children, me surviving, of said Fellowes Davis, jr., and sh be dealt with, applied, and disposed of in accordance with the pro sions herein contained with reference to the shares of such surviv and their issue and in like manner, including the further provisi that in the event that any such child of Fellowes Davis, jr., me su viving, shall die prior to attaining the age of twenty-one (2 years leaving issue, then the share of such child so dying shall divided equally among such issue.

In the event that said Fellowes Davis, jr., shall not be living the time of my death and shall leave no child who shall survive who shall attain the age of twenty-one (21) years, I direct that s sum of ten thousand dollars ($10,000), together with any accum lated income thereof, shall form and constitute a portion of residuary estate and shall be held and disposed of according to provisions hereinafter contained concerning my said residu estate.

31 Twenty-third. I give and bequeath to Wayne C. Bogue, Detroit, Michigan, if he be living at the time of my dea the sum of five thousand dollars ($5,000). In case said Wayne Bogue shall not be living at the time of my death but shall leave child or children who shall be living at the time of my death, I dir my executors and trustees hereinafter named to divide the sum of

housand dollars ($5,000) into such number of separate parts as shall e equal to the number of such children of said Wayne C. Bogue, me surviving, and to pay, transfer, deliver, and convey to each of such hildren as shall have attained the age of twenty-one (21) years at he time of my death one of such separate parts and to hold the emaining separate parts, or all thereof, in case no such child shall ave attained the age of twenty-one (21) years at the time of my eath, in trust, nevertheless, to collect the rents, income, and profits pon one of such separate parts, or such portion thereof as they may eem advisable, for the education, support, and maintenance of each hild as shall not have attained the age of twenty-one (21) years at he time of my death, until such child shall attain the age of twenty- ne (21) years, and thereupon to pay, transfer, deliver, and convey he principal of one such separate part to each such child as shall so ttain the age of twenty-one (21) years, together with any accumu- ated income thereof; provided that if any such child shall die prior o attaining the age of twenty-one (21) years without issue, the hare of such child so dying, together with the rents, income, and profits thereof theretofore accumulated and thereafter accru- ing thereon shall be divided equally among the surviving chil- dren, me surviving, of said Wayne C. Bogue, and shall be ealt with, applied, and disposed of in accordance with the pro- isions herein contained with reference to the shares of such sur- ivors and their issue and in like manner, including the further rovision that in the event that any such child of Wayne C. Bogue, e surviving, shall die prior to attaining the age of twenty-one (21) ears leaving issue, then the share of such child so dying shall be ivided equally among such issue.

In the event that said Wayne C. Bogue shall not be living at the me of my death and shall leave no child who shall survive me who hall attain the age of twenty-one (21) years, I direct that said sum f five thousand dollars ($5,000), together with any accumulated in- ome thereof, shall form and constitute a portion of my residuary state and shall be held and disposed of according to the provisions ereinafter contained concerning my said residuary estate.

Twenty-fourth. I give and bequeath to Charles G. Smith, of Rye, ew York, if he be living at the time of my death, the sum of five housand dollars ($5,000).

Twenty-fifth. I give and bequeath to my secretary, Gillison C. ott, if he be living at the time of my death, the sum of twenty-five housand dollars ($25,000). In case said Gillison C. Lott be not iving at the time of my death, I give and bequeath said sum of twenty-five thousand dollars ($25,000) to his daughter, Emma Lott, in case she be living at the time of my death and shall at that time have attained the age of twenty-one (21) years; t in the event that she be living at the time of my death and has ot attained the age of twenty-one (21) years, I give and bequeath id sum of twenty-five thousand dollars ($25,000) to my executors

and trustees hereinafter named, in trust, nevertheless, to collect t
rents, income, and profits thereof and to apply the same, or such po
tions thereof as they may deem advisable, for the education, suppor
and maintenance of said Emma Lott until she shall attain the age
twenty-one (21) years, and then to pay, transfer, deliver, and conv
the principal to her, together with any accumulated income there

In case said Gillison C. Lott shall not be living at the time of m
death, but his said daughter, Emma Lott, shall then be living b
shall die prior to the time when she attains the age of twenty-o
(21) years, I direct that the principal of said sum of twent
five thousands dollars ($25,000), together with any accumulate
income thereof, shall become and constitute a part of my residua
estate and become subject to the provisions hereinafter contain
concerning my said residuary estate.

Twenty-sixth. In case Katharine Martin, daughter of M. D. Ma
tin, of New York City, shall be living at the time of my death a
shall then have attained the age of twenty-one (21) years, I give a
bequeath to her the sum of five thousand dollars ($5,000). I
case she be living at the time of my death and at that tim
34 has not attained the age of twenty-one (21) years, I give a
bequeath to my executors and trustees hereinafter named th
sum of five thousand dollars ($5,000), in trust, to collect the rent
income and profits thereof and to apply the same, or such portio
thereof as they may deem advisable, for the education, support, an
maintenance of said Katharine Martin until she shall have attain
the age of twenty-one (21) years, and thereupon to pay, transfe
deliver, and convey the principal over to her, together with an
accumulated income thereof.

In case said Katharine Martin shall die before she becomes twenty
one (21) years of age, I direct that the principal of said sum
five thousand dollars ($5,000), together with any accumulated in
come thereof, shall become and constitute a part of my residua
estate and become subject to the provisions hereinafter contain
concerning my said residuary estate.

Twenty-seventh. I give and bequeath to Mrs. Jennie M. Gat
Shane, of Durand, Michigan, if she be living at the time of m
death, the sum of ten thousand dollars ($10,000).

Twenty-eighth. I give and bequeath to Mrs. Susan August
Gates Tuttle, of Durand, Michigan, if she be living at the time
my death, the sum of ten thousand dollars ($10,000).

Twenty-ninth. I give and bequeath to Lavern Seanor, of We
Chicago, Illinois, if she be living at the time of my death, the su
of ten thousand dollars ($10,000).

35 Thirtieth. I give and bequeath to S. W. Gates, of Duran
Michigan, if he be living at the time of my death, the sum
ten thousand dollars ($10,000).

Thirty-first. I give and bequeath to Nellie Madden, of Port Arthu
Texas, if she be in my employ at the time of my death, the sum
two thousand dollars ($2,000).

Thirty-second. I give and bequeath to Mrs. W. H. Achey, of Port Arthur, Texas, if she be in my employ at the time of my death, the sum of two thousand dollars ($2,000).

Thirty-third. I give and bequeath to Maggie Higgins, of Chicago, Illinois, if she be living at the time of my death, the sum of five hundred dollars ($500).

Thirty-fourth. I give and bequeath to Margaret Harms, if she be living at the time of my death, the sum of one thousand dollars ($1,000).

Thirty-fifth. I give and bequeath to Bernard Harms, if he be in my employ at the time of my death, the sum of two thousand dollars ($2,000).

Thirty-sixth. I give and bequeath to Karl Ziehr, if he be living at the time of my death, the sum of one thousand dollars ($1,000).

Thirty-seventh. I give and bequeath to Francis Nyilas, if he be in my employ at the time of my death, the sum of two thousand dollars ($2,000).

Thirty-eighth. I give and bequeath to Albert Moreau, if he be in my employ at the time of my death, the sum of two thousand dollars ($2,000).

Thirty-ninth. I give and bequeath to Clarence L. Briggs, if he be living at the time of my death, the sum of one thousand dollars ($1,000).

Fortieth. I give and bequeath to William S. Heeg, if he be living at the time of my death, the sum of one thousand dollars ($1,000).

Forty-first. I give and bequeath to Ella Rehwoldt, of Chicago, Illinois, if she be living at the time of my death, the sum of one thousand dollars ($1,000).

Forty-second. I give and bequeath to my maid, Marie Ziehr, the sum of five thousand dollars ($5,000), provided she shall be in my employ at the time of my death.

Forty-third. I give and bequeath to my butler, Nathan F. Bennett, the sum of five thousand dollars ($5,000), provided he shall be in my employ at the time of my death.

Forty-fourth. I give and bequeath to Mary Fitzpatrick, now a maid at the Plaza Hotel in New York City, provided she shall be in my service at the time of my death, the sum of five thousand dollars ($5,000).

Forty-fifth. I give, devise, and bequeath to my niece Dellora F. Angell, of St. Charles, Illinois, my home and residence at Port Arthur, Texas, consisting of about seven (7) acres of land, and all the buildings thereon and appurtenances thereunto belonging; also, my stable and garage at No. 103 West 52d Street, New York City, together with all my automobiles and the appurtenances thereunto belonging; also, the property owned by me at Tomahawk Lake, Wisconsin; also, all of the furniture, bric-a-brac, gold and silver plated wares and house furnishings, of every kind and character, which I may own at the time of my death; also, all of the paintings of which I shall die possessed, wheresoever they may be, and all of my jewelry, precious stones, and other personal effects.

In the event that my said niece, Dellora F. Angell, shall not be living at the time of my death, I give, devise, and bequeath all of the real and personal property hereinbefore mentioned in this paragraph numbered "Forty-fifth" of this, my will, excepting the paintings hereinbefore mentioned, to my brother, Edward J. Baker, of St. Charles, Illinois, if he be living at the time of my death; and in the event that my said niece, Dellora F. Angell, shall not be living at the time of my death, I give and bequeath all the paintings of which I shall die possessed to the Metropolitan Museum of Art in the city of New York, a corporation constituted and created under the laws of the State of New York.

Forty-sixth. I give and bequeath to the Woodlawn Cemetery, a corporation organized and existing under the laws of the State of New York, the sum of twenty-five thousand dollars
38 ($25,000), in trust, however, to apply the income arising therefrom, under the direction of the directors, to the repair, preservation, or renewal of any mausoleum, monument, or other structure in or on lot No. 12,895 in sections 134 and 135, Pine Plot, in the cemetery grounds of said corporation situated in the city of New York, county of Bronx, and to the planting and cultivating of trees, shrubs, flowers, and plants in and around said lot, and to apply the surplus thereof, if any, to the embellishment and improvement of said lot.

Forty-seventh. I give and bequeath to Mary Gates Hospital, Port Arthur, Texas, the sum of ten thousand dollars ($10,000).

Forty-eighth. I give and bequeath to Port Arthur College, Port Arthur, Texas, the sum of ten thousand dollars ($10,000).

Forty-ninth. I give and bequeath to the St. Charles School for Boys, of St. Charles, Illinois, the sum of one thousand dollars ($1,000).

Fiftieth. I give and bequeath to my brother, Edward J. Baker, of St. Charles, Illinois, if he be living at the time of my death, the sum of five hundred thousand dollars ($500,000).

Fifty-first. All the rest, residue, and remainder of my property, both real and personal, of every kind and description whatsoever and wheresoever situated, which shall belong to me or be subject to my disposition, including all property over which I may now
39 or hereafter have any power of appointment (all whereof is hereinafter referred to as my "residuary estate"), I give, devise, bequeath, and appoint to my executors and trustees hereinafter named: in trust, nevertheless, to hold, pay, transfer, convey, and dispose thereof and of the rents, income, and profits thereof, upon the following trusts and upon and subject to the following conditions, directions, and limitations, namely:

I. For the period of two (2) years subsequent to the time of my death or for a shorter period at the election of my executors and trustees expressed by them in writing at any time within said two (2) years (no such period, however, to extend longer than the date of the death of the survivor of my brother, Edward J. Baker

nd my niece, Dellora F. Angell), to collect the rents, income, and profits thereof, and to apply one-half (½) thereof or such portion f such one-half (½) thereof as they may deem advisable for the ducation, support, and maintenance of my said niece, Dellora F. ngell, and the balance thereof to pay, utilize, and apply for and n account of any taxes, debts, or charges, governmental or other- ise, payable by or out of my estate.

II. As of the date of and upon the termination of the period uring which my executors and trustees are authorized and directed y the foregoing provisions of paragraph "I" of this article "Fifty-first" of this my will to collect, apply, pay, and utilize, as therein provided, the rents, income, and profits of my residuary estate, or as of the date of my death if for any eason the foregoing provisions of said paragraph "I" of this rticle can not legally be carried into effect, to divide my residuary state into two (2) equal shares and,

(1) If my said niece, Dellora F. Angell, shall not then have at- ained the age of twenty-one (21) years, to collect the rents, income, nd profits upon one of such two (2) equal shares; to apply the same, r such portion thereof as they may deem advisable, for the edu- ation, support and maintenance of my said niece until she shall tain the age of twenty-one (21) years; to accumulate the balance hereof; and, upon my said niece attaining the age of twenty-one 21) years, to pay, transfer, deliver, and convey unto her said accu- ulated income, if any;

(2) If my said niece shall have attained the age of twenty-one 21) years at the time as of which said division of my residuary state into two (2) equal shares as hereinbefore provided to be ade, then from that time; but, if she shall not then have attained e age of twenty-one (21) years, then from the time when she hall attain the age of twenty-one (21) years and thereafter and until she shall attain the age of thirty (30) years, to pay the net income upon said equal share to her in semiannual installments and upon her attaining the age of thirty (30) ars thereupon to transfer, deliver, and convey to her a one-fourth ¼) part of said equal share;

(3) Upon my said niece attaining the age of thirty (30) years hereafter and until she shall attain the age of thirty-five (35) ars, to pay to her in semiannual installments the net income upon e balance of said equal share remaining in the hands of my execu- rs and trustees during said period and, upon her attaining the e of thirty-five (35) years, to pay, transfer, deliver, and convey her one-third (⅓) of the balance of said equal share than remain- g in the hands of my executors and trustees;

(4) Upon my said niece attaining the age of thirty-five (35) years nd thereafter and until she shall attain the age of forty (40) years, pay to her in semiannual installments the net income upon the alance of said equal share remaining in the hands of my executors nd trustees during said period and, upon her attaining the age of

to all or such balance of the first of said equal shares disposed of by this article as may then and thenceforth remain in their hands, and

(10) If my said brother shall not die prior to the time as of which said division of my residuary estate is hereinbefore provided to be made; if at the time of his death all of the principal of the first of said equal shares disposed of by this article shall have become payable and distributable to the persons entitled thereto hereunder and if at the time of his death either my said niece or issue of my said niece shall be living, to pay, transfer, deliver, and convey all of the principal of the second of said two (2) equal shares to my said niece if she be then living or if she be not then living then to her issue, per stirpes and not per capita

III. In case payment, application, or distribution cannot be made by my said executors and trustees of the principal of said trust funds hereinbefore created and provided for by the foregoing provisions of this article numbered "Fifty-first" of this, my will, or of the rents, income, and profits thereof, or of any part of said
47 trust funds or of such rents, income, and profits, because at the time or times when such disposition is hereinbefore directed to be made the person or persons entitled thereto shall not be living, then and thereupon, but only in such event, I direct that all or such portion of said trust funds and of the rents, income and profits thereof not effectually disposed of as aforesaid shall be divided into two (2) equal parts, to be held and disposed of by my said executors and trustees in the manner and under and subject to the conditions, directions, and limitations set forth in the following subdivision "(a)" and "(b)" of this paragraph:

(a) I give, devise, and bequeath to my executors and trustees one of such equal parts, in trust, nevertheless, for the erection, creation, maintenance, and endowment of an old people's home to be known as the "Gates Old People's Home" and to be located near West Chicago, Du Page County, Illinois. It is my wish that those eligible for admission to the home shall be old people of either sex and of reduced circumstances, who have been residents of either Du Page County or Kane County, Illinois, or both said counties, for not less than three (3) years prior to admission, and that they shall be allowed to stay in the home during their natural life if they wish to do so; provided, however, that my executors and trustees may in their discretion permit old people residing elsewhere to be admitted to said home.

48 I recommend that my said executors and trustees shall cause to be incorporated a body corporate under the laws of the State of Illinois for the purpose of founding, establishing, and maintaining the said home to be known as the "Gates Old People's Home," to be located near West Chicago, Du Page County, Illinois, for the purposes hereinbefore set forth and for the purpose of taking over and receiving possession of and holding the said fund hereinbefore provided to be used for said purposes, wherewith to be found, conduct, and maintain such home as aforesaid.

In the event that it shall be inexpedient in the judgment of my said executors and trustees to adopt the plan above outlined for the establishment of said home, then and in such event I hereby request and direct that my said executors and trustees shall so administer the said trust as to secure by some other means and in some other legal manner the same objects and purposes which would have been accomplished had the method above set forth been followed.

(b) I give, devise, and bequeath the second of said two (2) equal parts to my said executors and trustees, in trust, nevertheless for the erection, creation, maintenance, and endowment of a children's home or homes, to be known by such name or names as my said executors and trustees shall select, and to be located at such place or places as they shall determine. It is my intention that the children who shall be admitted to such home or homes shall be of reduced circumstances and that they shall be allowed to remain in the home to which they are admitted up to such age, not beyond the period of their minority, as my executors and trustees may determine.

I confide to the discretion of my executors and trustees the question of whether any body or bodies corporate shall be incorporated under the laws of the State or States wherein such home or homes shall be located, and I request and direct that my said executors and trustees shall so administer the said trust as to secure by any lawful means or in any lawful manner the objects and purposes hereinbefore set forth.

Fifty-second. I hereby nominate, constitute, and appoint John J. Mitchell, of Chicago, Illinois, Augustine L. Humes, of New York City, and Charles E. Herrmann, of Scarsdale, New York, the executors of my will and trustees of every trust created thereby. In the event of the death before or after my death of any individual or individuals hereinbefore named as an executor and trustee or as executors and trustees of my will, or upon the resignation, incapacity, or failure to qualify before my estate shall be wound up or while any trust created or established by my will continues in existence, of any individual or individuals hereinbefore named as an executor and trustee or as executors and trustees of my will or of any individual or individuals who shall have qualified as an executor or trustee or as executors and trustees thereof, I hereby nominate, constitute, and appoint the Illinois Trust & Savings Bank, of Chicago, Illinois, as an executor of my will and as trustee of every trust created thereby, in the place and stead of such individual or individuals, hereinbefore named as an executor and trustee or as executors and trustees, as shall die, resign, become incapacitated or fail to qualify as aforesaid. In any such event the Illinois Trust & Savings Bank, upon its qualification as such executor or trustee, shall act as such jointly and together with any of the said individuals above named who shall still remain executors or trustees and shall act as sole executor and trustee upon the death, resignation, incapacity, or failure to qualify of all of the

individuals hereinbefore named as executors and trustees. In case the said Illinois Trust & Savings Bank shall for any reason be unable or unwilling to act as such executor or trustee or shall fail to qualify as such executor or trustee, in any event hereinbefore stated upon the happening whereof it is hereby appointed executor and trustee, or, having qualified as such executor or trustee, shall resign, then and thereupon I nominate, constitute and appoint the Equitable Trust Company of New York as such executor and trustee, subject to the same conditions and limitations herein set forth with reference to the said Illinois Trust & Savings Bank. Neither the failure nor the inability of the said Illinois Trust & Savings Bank or of the said the Equitable Trust Company of New York to qualify or continue to act, in any event hereinbefore stated, as executor or trustee, shall affect, alter, or impair the ap-
51 pointment of any of the individuals hereinbefore specifically named as executors and trustees or the powers, authority, and duties conferred and imposed upon any of them as an executor or trustee of my will.

I request and direct that neither my executors and trustees hereinbefore named, whether as executors of as trustees, nor any others who have life interests in any property bequeathed or devised by my will, shall be required to give any bond of any kind or nature for the performance of their trusts or for any other purpose.

Fifty-third. It is my will, and I direct, that no person who may be at the time entitled to any share, either of the income or of the principal of any trust fund provided by this will, shall have the right or power to anticipate or encumber in any wise the said share, either of principal or of income to be received from said trust, or to give orders in advance for the same on my executors or trustees.

Fifty-fourth. Should any of the beneficiaries under this, my will, or under any codicil thereto, object to the probate thereof or in any wise, directly or indirectly, contest or aid in contesting the same or any of the provisions thereof or the distribution of my estate thereunder, then and in that event I annul any bequest or devise made to such beneficiary, and it is my will that such beneficiary shall be absolutely barred and cut off from any share in my estate and the bequest or devise that would have otherwise gone to such beneficiary I direct shall constitute a part of my residuary estate.

52 Fifty-fifth. Should any or either of the provisions of this will fail or be held ineffectual or invalid for any reason, it is my will that no other portion or provision of this will be invalidated, impaired, or affected thereby, but that this will be construed as if such invalid provision or direction had not been herein contained.

Fifty-sixth. I direct that all the legacies and annuities given by me in this, my will, shall be paid and delivered free of legacy duty and all other duties.

Fifty-seventh. I hereby authorize and empower my said executors and their successors, in their discretion, to sell or dispose of any or

all of my personal estate of every name and kind and wheresoever situated not herein specifically bequeathed, including stocks, bonds, and securities of all kinds, at public or private sale, and to invest and reinvest the proceeds thereof from time to time.

Fifty-eighth. I authorize and empower my said executors and their successors, in their discretion, to sell and convey at public or private sale, at such time or times, for cash or on credit, or partly for cash and partly on credit, and upon such terms and conditions as to them seem best, any and all real estate which shall belong to me or to which I shall be entitled at the time of my death, except such as is hereby specifically devised, and to make, execute, and deliver any and all deeds or other instruments necessary or proper to carry any such sale into effect.

Fifty-ninth. I authorize and empower my executors and their successors, in their uncontrolled discretion, from time to time, and for such reasonable periods, not to exceed any limit of time imposed by law, and on such terms and conditions as they may deem proper, to let or lease any and all real estate which shall belong to me or to which I shall be entitled at the time of my death, except such as is hereby specifically devised, and to make, execute, and deliver any and all instruments of lease which may be necessary or proper to carry any such lease into effect.

Sixtieth. I authorize and empower my executors and their successors, in their uncontrolled discretion, to deliver, in lieu of cash, to any person or persons to whom any cash bequest is hereby made, stocks, bonds, or other securities or property which shall belong to me at the time of my death but which is not herein specifically bequeathed or devised, provided that such securities or property so delivered shall be of a market value equivalent to the amount of such bequest or bequests.

Sixty-first. In the division and distribution of my residuary estate, or of the principal or income of any trust provided to be created by this my will, I authorize and empower my executors and trustees and their successors, in their uncontrolled discretion, to deliver to the person or persons entitled thereto under the provisions of this my will, the portion of any particular kind of personal property of which I may die possessed and to which such person is entitled, in kind, provided such property is capable of division in kind, and without any obligation on the part of my executors and trustees or their successors to make any sale thereof for the purpose of making such division and distribution.

Sixty-second. I authorize and empower my executors and their successors to retain unsold, so long as in their uncontrolled discretion they shall see fit, all or any stocks, bonds, or other securities or property which shall belong to me at the time of my death but which are not hereby specifically bequeathed or devised, although such bonds, stocks, or other securities or property are not of a character such as trustees or executors are allowed to invest in or to retain under the laws of the State of Texas or of any other State, and in

their uncontrolled discretion to sell all or any part thereof and t
exchange the same for and to reinvest the proceeds of any sa
thereof or of any stocks, bonds, or other securities or property
any time held by them in any securities or property which now a
or hereafter shall be authorized by the laws of the State of Texa
or by the laws of the State of Illinois or the State of New Yor
as investments for trust funds, and also in any of the bonds, note
or other securities or the capital stock of any corporation organize
under the laws of the United States or of any State of the Unite
States, or of any Territory of the United States, which has pai
dividends on all classes of its capital stock for five (5) consecutiv
years previous to the investment in such bonds or notes or othe
securities or capital stock. Neither my executors nor thei
55 successors shall, except in case of bad faith, be liable for an
loss or damage resulting from the retention of any stock
bonds, or other securities or property owned by me at the time of m
death or from any investments or reinvestments made or action take
in pursuance of the provisions of this article of my will.

Sixty-third. I authorize and empower my executors and thei
successors, in their uncontrolled discretion, to consent to the reo
ganization or consolidation or the readjustment of the finances o
any corporation or the sale to another corporation or person of th
property of any corporation, the bonds, notes, or other securities o
the capital stock of which are held by it or them, and do any ac
with reference to such bonds, notes, or other securities or capita
stock necessary or proper to enable it or them to obtain the benefi
of any such reorganization, readjustment, consolidation or sal
and in case any of the bonds, notes, or other securities or capita
stock so held at any time contain an option or options to the holder
thereof to convert the same into other bonds or notes or other securi
ties or capital stock, or in case the right shall be given to the holder
of such bonds or notes or other securities or capital stock so held
to subscribe for additional bonds or stocks or other securities o
capital stock, I further authorize and empower my executors and
their successors, in their uncontrolled discretion, to exercise such
option or options and to make such conversions and subscription
and to make any necessary payments therefor and to hold such
bonds, notes, or other securities or capital stock so acquired
56 as investments for my estate. Neither my executors nor thei
successors shall, except in case of bad faith, be liable for any
loss or damage resulting from any action taken under the provision
of this article of my will; and except in case of bad faith, the judg
ment of my said execu- regarding the value of any property set asid
to constitute the principal of any trust created by this, my will, o
regarding the relative values of any shares or parts thereof, shall b
conclusive.

Sixty-fourth. I authorize and empower my trustees or trustee fo
the time being of any trust by my will created to accept as part o
the trust estate from my executors or their succe sors, at the fai

alue thereof, as may be agreed upon by such trustees or trustee nd my executors or their successors, any stocks, bonds, or other ecurities or property belonging to me at the time of my death or n which my executors or their successors may have invested any art of my estate and to retain as investments of the trust estate for long as such trustees or trustee shall see fit, any stocks, bonds, or ther securities or property so received from my executors or their uccessors, although such stocks, bonds, or other securities or prop- rty so retained may not be of such character as trustees are per- itted to invest in by the laws of the State of Texas, or of any other tate; and in their discretion to sell all or any part thereof and to xchange the same for and to reinvest the proceeds of any sale hereof, or of any stocks, bonds, or other securities or property at ny time held by them, in any securities or property which now are or hereafter shall be authorized by the laws of the State of Texas or by the laws of the States of Illinois or New York, as investments for trust funds, and also in any of the bonds notes or other securities or the capital stock of any corporation rganized under the laws of the United States or of any State of the nited States or of any Territory of the United States which has aid dividends on all classes of its capital stock for five (5) con- ecutive years previous to the investment in such bonds or notes other securities or capital stock. My trustees shall not, except case of bad faith, be liable for any loss or damage resulting from e retention by them of any stocks, bonds, or other securities or roperty owned by me at the time of my death or from any invest- ents or reinvestments made or action taken in purusance of the rovisions of this article of my will. The trustees or trustee for the me being of any trust created by this, my will, are authorized to tain any real estate or to accept as part of the trust estate any al estate which I may leave at the time of my death, except such is hereby specifically devised.

Sixty-fifth. I authorize and empower the trustees or trustee for e time being of any trust by my will created, in the uncontrolled scretion of such trustees or trustee, to consent to the reorganiza- n or consolidation or the readjustment of the finances of any cor- ration or the sale to another corporation or person of the prop- ty of any corporation, the bonds, notes, or other securities or the pital stock of which are held by them, and to do any act with ference to such bonds, notes, or other securities or capital stock necessary or proper to enable them to obtain the bene- fit of any such reorganization, readjustment, consolidation, or sale, and in case any of the bonds, notes, or other securi- s or capital stock so held shall at any time contain an option or tions to the holders thereof to convert the same into other bonds notes or other securities or capital stock, or in case the right all be given to the holders of such bonds or notes or other secur- es or capital stock so held to subscribe for additional bonds or

No. 1619.—Last will and testament of Dellora R. Gates. Dated September 20, 1918. Filed the 10th day of Dec., 1918. A. C. Walker, county clerk, Jefferson County, Texas. By E. J. Keasler, deputy.

I, Dellora R. Gates, of Port Arthur, Jefferson County, Texas, do hereby make, publish, and declare this as and for a codicil to my last will and testament, which I have heretofore made on the twentieth day of September, one thousand nine hundred and eighteen.

First. I give and bequeath twenty-five thousand dollars ($25,000) to Augustine L. Humes of the city of New York.

Second. In case Roberta Lavern Angell, the daughter of my brother-in-law, Frank R. Angell, of St. Charles, Illinois, shall be living at the time of my death and shall then have attained the age of twenty-one (21) years, I give and bequeath to her the sum of five thousand dollars ($5,000). In case she shall be living at the time of my death, but at that time shall not have attained the age of twenty-one (21) years, I give and bequeath to my executors and trustees hereinafter named the sum of five thousand dollars ($5,000) in trust to collect the rents, income, and profits thereof and to apply the same or such portion thereon as my said executors and trustees may deem advisable for the education, support, and
63 maintenance of said Roberta Lavern Angell until she shall attain the age of twenty-one (21) years, and thereupon to pay, transfer, deliver, and convey the principal over to her, together with any accumulated income thereof.

In case said Roberta Lavern Angell shall survive me, but shall die before she becomes twenty-one (21) years of age, I direct that the principal of said trust fund of five thousand dollars ($5,000), together with any accumulated income thereof, shall become and constitute a part of my residuary estate and shall become subject to the provisions contained in my last will and testament concerning my said residuary estate.

Third. I give and bequeath to Albert Haeussler, if he be in my employ at the time of my death, the sum of two thousand dollars ($2,000).

In witness whereof I have hereunto signed my name and affixed my seal this twentieth day of September, one thousand nine hundred and eighteen.

DELLORA R. GATES. [SEAL.]

Signed and subscribed at the end and sealed by said Dellora R. Gates, the testatrix named in the foregoing codicil, in the presence of us; and at the time of such signing and subscription the above instrument was declared by the said testratrix to be a codicil to her last will and testament and then we and each of us, at the request
64 of said testatrix, in her presence and in the presence of one another, did sign our names as witnesses thereto at the end

of said codicil. And the said Dellora R. Gates then and there acknowledged to each and all of us that she signed said instrument and that the signature attached at the end thereof was her signature.

W. W. BRUCE,
Residing at Forest Hills, New York.
EDWARD M. CRONE,
Residing at 121 East 82nd St., New York City.
WM. J. FLANAGAN,
Residing at 1484 St. Nicholas Ave., New York City.

No. 1619.—Codicil to the last will and testament of Dellora R. Gates. Dated September 21st, 1918. Filed the 10th day of Dec., 1918. A. C. Walker, county clerk, Jefferson County Texas. By E. J. Keasler, deputy.

And

It is further considered, ordered, adjudged, and decreed by the court that J. W. Williams, Jan Van Tyen, and P. A. Heisig, all citizens of Jefferson County, Texas, be, and they are hereby, appointed appraisers in this behalf, and in connection with the executors they will return into court a proper inventory and appraisement.

W. M. CARROLL,
County Judge.

No. 1619.—In the matter of the estate of Dellora R. Gates, deceased. Decree of court admitting last will and testament of Dellora R. Gates, deceased, to probate.

G

LETTERS TESTAMENTARY

THE STATE OF TEXAS,
County of Jefferson.

In County Court, Jefferson County, Texas, January term, A. D. 1919. I, A. C. Walker, clerk of the County Court of Jefferson County, Texas, do hereby certify that on the 6th day of January, A. D. 1919, John J. Mitchell, Charles E. Herrmann, and Augustine L. Humes were duly granted by said court letters testamentary of the estate of Dellora R. Gates, deceased, and that they qualified as such executors on the 6th and 8th days of January, A. D. 1919, as the law requires.

Witness my hand and seal of office, at Beaumont, Texas, this 8th day of January, A. D. 1919.

[SEAL]

A. C. WALKER,
Clerk County Court, Jefferson County, Texas.
By E. J. KEASLER,
Deputy.

No. 1619.—Estate of Dellora R. Gates, deceased. Letters testamentary to John J. Mitchell, Charles E. Herrmann, and Augustine L. Humes as executors. Issued the 18th day of January A. D. 1919. A. C. Walker, clerk County Court, Jefferson County, Texas. By E. J. Keasler, deputy.

THE STATE OF TEXAS,
County of Jefferson, ss:

I, A. C. Walker, clerk of the County Court in and for the
66 county of Jefferson, in the State of Texas, which court is a court of record having the seal which is affixed hereto, do hereby certify and attest that the foregoing is a full, true, and correct copy (a) of the decree of said court probating the last will and testament of Dellora R. Gates, deceased, dated September 20, 1918, and the codicil thereto, also dated September 20, 1918, and directing the issuance of letters testamentary, said decree containing a full, true, and correct copy of the originals of said last will and testament and of said codicil, and (b) of the letters testamentary issued under and pursuant to said decree to John J. Mitchell, Augustine L. Humes, and Chas. E. Herrmann.

And I further certify and attest that I am the clerk of the County Court in and for the county of Jefferson, in the State of Texas; that said court has jurisdiction and is duly authorized by the laws of the State of Texas to admit wills to probate and to grant letters testamentary and of administration, and to keep the same and the records thereof; and that I am such clerk and person in whose custody the said records are required by law to be and in whose office the same are required by law to be filed.

And I do further certify and attest that I have carefully compared the foregoing copy of the said decree with the original thereof on file and preserved in the office and custody of the clerk of the County Court in and for the county of Jefferson and State of Texas, and in my said office and custody as such clerk and that the foregoing is a full, true, and correct copy of said decree and
67 of the whole thereof; and that the said copy of said letters testamentary is a full, true, and correct copy of the letters testamentary duly granted by the said court to the said John J. Mitchell, Augustine L. Humes, and Chas. E. Herrmann on the 14th day of January, 1919.

In witness whereof I have hereunto set my hand and affixed the seal of said court, which is my official seal, at Beaumont, Texas, this 24th day of January, 1919.

A. C. WALKER,
Clerk of the County Court in and for the County of Jefferson, in the State of Texas.

THE STATE OF TEXAS,
County of Jefferson, ss:

I, W. M. Carroll, the judge of the County Court in and for the county of Jefferson, in the State of Texas, do hereby certify and

attest that A. C. Walker, whose name appears affixed to the foregoing certificate and attestation, is the clerk of the said County Court, which court is a court of record having a seal and has jurisdiction and is duly authorized by the laws of the State of Texas to admit wills to probate and to grant letters testamentary and of administration and to keep the same and the records thereof; that said A. C. Walker was clerk of said court at the time of the making and subscribing of the foregoing certificate and attestation; that the signature affixed to the foregoing certificate and attestation of the said A. C. Walker, as such clerk of said court, is the genuine signa-
68 ture of the said A. C. Walker, as such clerk; that the seal affixed to said certificate and attestation is the seal of the said County Court in and for the county of Jefferson, in the State of Texas, and is the official seal of the said A. C. Walker, as clerk of said court; that said office of the clerk of said court is the office wherein the said records mentioned in said certificate and attestation are required by law to be filed and preserved; that said A. C. Walker, as such clerk of said court, is the officer in whose custody the said records are required by law to be, and that said A. C. Walker, as clerk of said court, is the proper officer to execute the said certificate and attestation, and that the said certificate and attestation is in due form and is in accordance with the laws of the State of Texas.

In witness whereof I have hereunto set my hand in my official character as the judge of the County Court in and for the county of Jefferson, in the State of Texas, at Beaumont, Texas, this 24th day of January, 1919.

[SEAL.]

W. M. CARROLL,
The Judge of the County Court in and for the County of Jefferson, in the State of Texas.

THE STATE OF TEXAS,
County of Jefferson, ss:

I, A. C. Walker, clerk of the County Court in and for the county of Jefferson, in the State of Texas, which court is a court of record having a seal, which is affixed hereto, do hereby certify and
69 attest that W. M. Carroll, whose name is subscribed to the foregoing certificate of due certification and attestation, was, at the time of signing the same, the judge of the County Court in and for the county of Jefferson, in the State of Texas, duly commissioned, qualified, and authorized by law to execute said certificate and attestation; and I do further certify and attest that the signature of the judge above named to the said certificate of due certification and attestation is genuine, and that full faith and credit are due to all his official acts as such judge.

In witness whereof I have hereunto set my hand and affixed the seal of said court, which is my official seal, at Beaumont, Jefferson County, Texas, this 24th day of January, 1919.

[SEAL.]

A. C. WALKER,
Clerk of the County Court in and for the County of Jefferson, in the State of Texas.

Exhibit "B" to petition 70

Copy

Page 1 of Return

Form 1040—UNITED STATES INTERNAL REVENUE SERVICE

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES OF MORE THAN $1,000, OR FOR SEPARATE RETURNS OF HUSBAND AND WIFE IN CASE THEIR COMBINED NET INCOME EXCEEDS $2,000, FOR CALENDAR YEAR 1919

IF RETURN IS FOR CALENDAR YEAR 1919 FILE IT WITH THE COLLECTOR OF INTERNAL REVENUE FOR YOUR DISTRICT ON OR BEFORE MARCH 15, 1920

IF FOR A PERIOD OTHER THAN A CALENDAR YEAR THE RETURN SHOULD BE FILED ON OR BEFORE THE 15TH DAY OF THE THIRD MONTH FOLLOWING THE CLOSE OF SUCH PERIOD

Or for period begun _____, 19__, and ended _____, 19__

PRINT NAME AND ADDRESS PLAINLY BELOW

ESTATE OF DALLONA H. GATES Deceased

17 Battery Place

New York City

Examined by

Audited by

FIRST PAYMENT

$

Cashier's Stamp

1. Did you make a return for 1918? No.

2. Did you receive gross income of $5,000 or more during the taxable year 1919? No.

3. Are you married and living with husband or wife? No.

4. If married, what is the name of husband or wife? No.

5. Are you a citizen of the United States? Yes.

6. If not a citizen, are you a resident or nonresident of the United States? No.

7. Have you personally received income for the taxable year as guardian, committee, executor, trustee, agent, receiver, conservator, or in any fiduciary capacity for any person, estate, or corporation? No.

8. If so, state name and address of such person, estate, or corporation, and nature of such fiduciary relation. No.

9. Have you filed or will you file a return of income for the taxable year with the collector of internal revenue for the district in which is located the principal place of business or principal office or agency of the corporation of which you are president, vice president, manager, or principal officer? No.

10. If you are claiming the credit for dependents, state number of persons actually supported by you and who are closely connected with you in family relationship, and their relationship to you. No.

11. Are you married and living with husband or wife? No.

12. If husband or wife is deceased, or if husband and wife are living apart, state name and address of husband or wife, and whether or not you or husband or wife will make a return for the taxable year. No.

13. Are you claiming the credit for dependents because you are supporting your father or mother? No.

14. Are you claiming the credit for dependents because you are supporting a person other than husband or wife, father or mother, or child under 18 years of age? No.

15. Are you claiming the credit for dependents because you are supporting a child under 18 years of age? No.

16. Are you claiming the credit for dependents because you are supporting a person other than husband or wife, father or mother, or child under 18 years of age? No.

17. Are you claiming the credit for dependents because you are supporting a person other than husband or wife, father or mother, or child under 18 years of age? No.

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86. Are you claiming the credit for dependents because you are supporting a person other than husband or wife, father or mother, or child under 18 years of age? No.

87. Are you claiming the credit for dependents because you are supporting a person other than husband or wife, father or mother, or child under 18 years of age? No.

88. Are you claiming the credit for dependents because you are supporting a person other than husband or wife, father or mother, or child under 18 years of age? No.

89. Are you claiming the credit for dependents because you are supporting a person other than husband or wife, father or mother, or child under 18 years of age? No.

90. Are you claiming the credit for dependents because you are supporting a person other than husband or wife, father or mother, or child under 18 years of age? No.

91. Are you claiming the credit for dependents because you are supporting a person other than husband or wife, father or mother, or child under 18 years of age? No.

92. Are you claiming the credit for dependents because you are supporting a person other than husband or wife, father or mother, or child under 18 years of age? No.

93. Are you claiming the credit for dependents because you are supporting a person other than husband or wife, father or mother, or child under 18 years of age? No.

94. Are you claiming the credit for dependents because you are supporting a person other than husband or wife, father or mother, or child under 18 years of age? No.

95. Are you claiming the credit for dependents because you are supporting a person other than husband or wife, father or mother, or child under 18 years of age? No.

96. Are you claiming the credit for dependents because you are supporting a person other than husband or wife, father or mother, or child under 18 years of age? No.

97. Are you claiming the credit for dependents because you are supporting a person other than husband or wife, father or mother, or child under 18 years of age? No.

98. Are you claiming the credit for dependents because you are supporting a person other than husband or wife, father or mother, or child under 18 years of age? No.

99. Are you claiming the credit for dependents because you are supporting a person other than husband or wife, father or mother, or child under 18 years of age? No.

100. Are you claiming the credit for dependents because you are supporting a person other than husband or wife, father or mother, or child under 18 years of age? No.

ESTATE OF DALLONA H. GATES

17 Battery Place

SUMMARY OF NET INCOME AND COMPUTATION OF TAX

Income Subject to Normal Tax

Item 1, page 2 (1918-19 return) _____

Item 12(f), column 2 (1917 return) _____

Item 17, column 4 (1916 return) _____

Total (Items 15 and 16) _____

Item 18(c), column 4 (1915 return) _____

Total (Items 17 and 18) _____

Item 19(c), column 5 (1913-15 return) _____

Total, Net Income (Items 19 and 20) _____

Did you employ anyone especially to prepare this return? If so, give name and address.

Thomas Scott & Lowell

Income Subject to Normal Tax

AT 6% RATE

32. Net income shown on page 2, Item 2 _____ $ 4,897 [illegible]

33. Less personal exemption _____ $ 4,000 [illegible]

34. Balance _____ $ [illegible]

35. Amount subject to tax at 4% (not over $4,000) _____

36. Balance subject to tax at 6% _____ $ [illegible]

AT 6% RATE

37. Amount of 1919, column 7 _____ $ [illegible]

38. Balance of personal exemption not used above (Item 33 minus Item 37) _____

39. Balance _____

40. Amount subject to tax at 6% (Item 39 or less than $4,000, whichever is less) _____

41. Balance subject to tax at 12% _____ $ [illegible]

Computation of Tax

42. Normal tax at 4% on amount of Item 35 _____ $ [illegible]

43. Normal tax at 6% on amount of Item 36 _____ $ [illegible]

44. Normal tax at 8% on amount of Item 40 _____

45. Normal tax at 12% on amount of Item 41 _____

46. Total normal tax _____

47. Surtax, additional (for persons whose net income from Schedule D exceeds $5,000) _____

48. Surtax, additional (for persons whose net income from Schedule E exceeds $5,000) _____

49. Total surtax (Item 47 plus Item 48) _____ $ [illegible]

Total Tax

50. Tax paid at source (5% of amount of Item 7, page 1, and Item 1, page 2) _____ $ [illegible]

51. Balance of Tax (Item 49 less Item 50) _____ $ [illegible]

52. Amount of tax paid on declaration of _____ $ [illegible]

53. Balance of tax due (Item 51 less Item 52) _____ $ [illegible]

I SWEAR (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and, to the best of my knowledge and belief, is a true and complete return in good faith for the taxable period as stated.

Charles E. Hewitt, Executor

Sworn to and subscribed before me this 12 day of March 1920.

Adriance

Notary Public, New York Co.

Certificate filed in New York County

Commission expires March 30, 1921

Executor

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Page 2 of Return **INDIVIDUAL RETURN OF TAXABLE IN ME**

A. INCOME FROM BUSINESS OR PROFESSION.

1. Kind of business _____ Business address _____

2. Total sales and receipts from business or professional services _____

COST OF GOODS SOLD:

4. Labor _____
5. Material and supplies _____
6. Merchandise bought for sale _____
7. Other costs (explain; schedule of principal items at foot of page or on separate sheet) _____
8. Plus inventories at beginning of year (see instructions, Schedule A, page 3) _____
9. Total _____
10. Less inventories at end of year _____
11. Net Cost of Goods Sold _____

Did you claim an inventory loss for 1918? _____

Is deduction claimed in deduction in Item 11? _____

OTHER BUSINESS DEDUCTIONS:

12. Salaries and wages not reported as "Labor" under "Cost of goods sold" _____
13. Rent on business property to which owner has no equity _____
14. Interest on business indebtedness to others _____
15. Taxes on business and business property _____
16. Repairs, upkeep and maintenance, depreciation, and property losses not claimed in table below _____
17. Amortization of war facilities _____
18. Bad debts arising from sales or services rendered _____
19. Other expenses (without duplication of any of principal items at foot of page or on separate sheet) _____
20. Total (Items 12 to 19, inclusive) _____
21. Net Gain, more Total Deductions (Item 11 plus Item 20) _____
22. Net Income from Business or Profession (Item 3 minus Item 21) _____

B. INCOME FROM SALARIES, WAGES, COMMISSIONS, BONUSES, DIRECTOR'S FEES AND PENSIONS.

1. Be Very Specific (Give name.)	2. Occupation.	3. Place and Address of Employer.	4. Amount Received.

Salary to self and dependent minor children included in any deduction in Schedule A _____

Total Income from Salaries, etc. _____

C. INCOME FROM PARTNERSHIPS, PERSONAL SERVICE CORPORATIONS AND FIDUCIARIES. (Fill in and attach Form 1)

D. PROFIT FROM SALE OF LAND, BUILDINGS, STOCKS, BONDS AND OTHER PROPERTY. (Fill in and attach Form 1)

1. Date of Purchase.	2. Kind and Address of Property or Person.	3. Cost or other basis as of March 1, 1913.	4. Cost of Additions and Betterments since March 1, 1913.	5. Depreciation allowed or allowable since March 1, 1913.	6. Original Cost or other basis as of March 1, 1913, plus Additions and Betterments less Depreciation.	7. Sale Price, Actual Value March 1, 1913, or Insurance Adjustment.

Net Profit from Sales (total of columns 5 and 7 minus total of columns 6 and 8) _____

E. INCOME FROM RENTS AND ROYALTIES.

1. Kind of Property.	2. Name and Address of Tenant, Lessee, etc.	3. Rentals Received.	4. Royalties Received.	5. Expenses.	6. Taxes.	7. Depreciation allowed or allowable.

Net Income from Rents and Royalties (total of columns 3 minus total of columns 4, 5, 6, and 7) _____

F. INCOME ON CONSERVATION BONDS CONTAINING TAX-FREE COVENANT, ON WHICH TAX OF 2% WAS PAID. (Attach Schedule showing description of bonds.)

G. OTHER INCOME (not including dividends, or interest on obligations of this United States).

1. Interest on bonds, mortgages, and other obligations of domestic and resident corporations (to accept or reported on Form 1) _____
2. Interest on bonds of foreign corporations and governments, and on bonds or stock of firms, corporations or associations not subject to the United States income tax (explain any portion of these not included) _____
3. Interest on bank deposits, mortgages, etc. _____
4. Amount paid for you by debtor corporations on tax-free covenant bonds _____
5. _____

Total _____

H. TOTAL NET INCOME FROM ABOVE SOURCES _____

I. GENERAL DEDUCTIONS NOT INCLUDED ABOVE. (Attach your deductions to back of return.)

1. Interest paid _____
2. Taxes paid _____
3. Contributions (see instructions below) _____
4. Losses sustained during year and not compensated for by insurance or otherwise (see instructions below) _____
5. Bad debts and other deductions _____
6. Amounts paid to dependent relatives, etc. _____

2. Total net income on which normal tax is to be calculated at 1918 rates (if minus (-) enter in RED, page 1 (unless minus exemption) _____

Min. Dividends, cash or stock, from surplus of corporations taxable by the United States upon any portion of their net income (including dividends on stock of principal service corporations accrued out of profits earned prior to January 1, 1913):

1. Received directly, including Item 12 (b), column 2 _____ 2. Received through partnerships, personal service corporations, and fiduciaries (Item 12 (b), column 3, plus Item 14 (a), column 3, and (c) _____ Total _____

Exempt interest on bonds and other obligations of the United States issued after September 1, 1917, and War Finance Corporation Bonds:

Received directly, $ _____; received through partnerships, personal service corporations and fiduciaries _____ Total _____

Exempt: Other items from partnerships, personal service corporations and fiduciaries. (Item 14 (b), column 7) _____

Total net income subject to surtax of 1918-19 rates. (If Item 2 shows a minus quantity, deduct amount from total of K (a), K (c) and K (e) before entering on this line. If this amount is a minus quantity, see instructions, page 3.) _____

ENTRY OF THIS TABLE ENTAILS CONSIDERING ANNUAL WEAR AND TEAR, PROPERTY ASSETS, ETC., CLAIMED AS DEDUCTIONS IN SCHEDULES A, E AND I ABOVE.

Item No.	1. Kind of Property (If buildings, state whether brick or frame, and if brick, whether stone trimmed.)	2. Date acquired.	3. Cost or Actual Value (Cost, if bought; Value, if from Inventory.)	4. Deductions Claimed for Current Year for Wear and Tear.	Wear and Tear, Obsolescence and Depletion Deductions Claimed Prior Years.		5. Total Deductions Prior Years.	6. Net Value at Beginning of Year.	7. Amount of Deduction Claimed this Return.
					a. Rate.	b. Amount.			

EXPLANATION OF DEDUCTIONS claimed in Schedules A, Items 7 and 19; Schedule E, columns 5, and Schedule I, Items 4, 5 and 6. (Attach separate sheet if necessary.)

Exhibit 'B' (continued) 72

Page 1 of Instructions

GENERAL INSTRUCTIONS—INDIVIDUAL RETURN

I. PERSONS REQUIRED TO MAKE A RETURN OF INCOME.

1. Returns of net income must be filed by every citizen of the United States whether residing at home or abroad, and every person residing in the United States, though not a citizen thereof, whose net income for the taxable year 1919 amounted to—

(a) $1,000 if single or if married and not living with wife (or husband).

(b) $2,000 if married and living with wife (or husband).

2. Under any of these circumstances a return must be made even though the amount of net income is not sufficient to incur tax liability. Note especially credits for personal exemption and dependents under Instruction VI on this page.

3. If the combined income of husband, wife and dependent minor children equaled or exceeded $2,000, all such income must be reported either on a joint return or on separate returns of husband and wife. If single and the income, including that of dependent minors, if any, equaled or exceeded $1,000, one return must be filed. However a minor having a net income of $1,000 or $2,000, according to the marital status, must file a return, as such person is not considered a dependent.

4. In the case of husband and wife whose combined net income exceeds $5,000, separate returns must be made on Form 1040, showing the respective amounts of income.

5. Income of a minor or incompetent, if derived from a separate estate under control of a guardian, trustee or other fiduciary, must be reported by his guardian or other legal representative.

II. PERIOD TO BE COVERED BY RETURN.

1. You were required to base your return for 1919 on the basis of your annual accounting period. Having established an accounting period for 1918 this period must be adhered to in 1919, unless permission was obtained from the Commissioner to make a change. A person having no fiscal year must file a return on the basis of a calendar year.

2. The dates on which the period covered by the return begins and ends, if other than a calendar year, must be plainly stated at the head of the return, and answers to questions 5, 6 and 7 must be given accordingly.

III. ACCRUED OR RECEIVED INCOME.

1. If you keep books showing income accrued and expenses incurred during the year, make your return from your books, but do not fail to include all your income, even if it is not entered in your books.

2. If you do not keep books showing income accrued and expenses incurred, report income received and expenses paid.

3. If you report income accrued, you must include all income that accrued in the taxable year even though not actually received.

4. If you report income received, you must include all income constructively received, such as bank interest credited to your account.

IV. ITEMS EXEMPT FROM TAX.

The following items are exempt from Federal income tax. However, nontaxable income of the classes described in paragraphs 1, 3, 4, 5 and 6 below should be reported in Item 21, page 1 of the return.

1. Pay not exceeding $3,500 for active services in the military or naval forces of the United States received during the taxable year prior to the termination of the present war as fixed by proclamation of the President.

2. Gifts (not made as a consideration for service rendered) and money and property acquired under a will or by inheritance (but the income derived from money or property received by gift, will or inheritance is taxable and must be reported).

3. Interest on bonds and other obligations of the United States issued before September 1, 1917, and on such bonds and other obligations issued after that date, to the extent provided by the acts authorizing the issue thereof. See Item 21, page 1 of return, and Instructions, page 2, under Item 21.

4. Interest on bonds and other obligations of United States possessions (Philippines, Porto Rico, etc.).

5. Interest on bonds and other obligations of States, Territories, political subdivisions thereof (such as cities, counties and townships), and the District of Columbia.

6. Interest on Federal Farm Loan bonds.

7. Dividends upon stock of Federal Reserve Banks. However, dividends paid by member banks are treated as dividends of ordinary corporations.

8. Interest on bonds issued by the War Finance Corporation, only if and to the extent provided in the acts authorizing the issue thereof.

9. Proceeds of life insurance policies paid upon the death of the insured to individual beneficiaries or the estate of the insured.

10. Amounts received by the insured under life insurance, endowment, and annuity contracts, provided such payments do not exceed the premiums paid in. The amount by which the total payments that have been received exceed the total premiums paid in is income, and must be reported in Schedule G.

11. Amounts received from accident and health insurance and under workmen's compensation acts plus the amount of any damages received by suit or agreement on account of injuries or sickness.

12. Compensation paid by a State or political subdivision thereof to its officers or employees.

V. FARMER'S INCOME SCHEDULE.

If you are a farmer or a farm owner renting your farm out on shares, obtain from the collector and fill out Form 1040F "Schedule of Farm Income and Expenses," and attach it to this return. Transfer the net farm income to line 22 of Schedule A of the return. Report income from salaries, rents, interest, sales of property, etc., in Schedules B to G of the return.

VI. CREDITS FOR PERSONAL EXEMPTION AND DEPENDENTS.

1. If you were married and living with your wife (or husband) or were head of a family on the last day of your taxable period, you may subtract from your net income, before calculating your normal tax, an exemption of $2,000 plus $200 for each person under 18 or mentally or physically defective) who was receiving his chief support from you on that date. If husband and wife make separate returns, this exemption may be claimed by either (but not by both) or may be divided between them.

2. If you were not married or did not live with wife (or husband) and were not head of a family on the last day of your taxable period, you are entitled to a personal exemption of $1,000 plus $200 for each dependent person under 18 (or mentally or physically defective) who was receiving his chief support from you on that date.

3. If by reason of a change in your accounting period you make a return for a part of a year, your personal exemption shall be as many twelfths of the amount that would be allowed for a full year as there are months in the period covered by the return.

4. The personal exemption must be reported on line 22, page 1 of the return, and must be supported by answers to questions 5, 6 and 7.

5. A "head of family" is a person who is the chief support of one or more persons living in his (or her) household, who are closely related to him (or her) by blood, marriage or adoption. (As to credit for taxes claimed in Item 41, see Articles 381-384, Regulations 45.)

VII. AFFIDAVIT.

1. The affidavit must be executed by the person whose income is reported unless he is a minor or incompetent, or unless he is ill, absent from the country, or otherwise incapacitated, in which case the legal representative or agent may execute the affidavit. However, a minor making his own return may execute the affidavit.

2. The oath will be administered without charge by any collector, deputy collector or internal-revenue agent, or if you are in the military or naval service of the United States by any military or naval officer who is authorized to administer oaths for purposes of military or naval justice and administration. If an internal-revenue officer is not available the return should be sworn to before a notary public, justice of the peace, or other person authorized to administer oaths.

VIII. WHEN AND WHERE THE RETURN MUST BE FILED.

1. If the return is for the calendar year 1919, file it with the collector of internal revenue for the district in which you live or have your principal place of business, on or before March 15, 1920. If for a period other than a calendar year, the return should be filed on or before the 15th day of the third month following the close of such period.

2. In case the taxpayer has no legal residence or place of business in the United States, the return should be forwarded to the Collector of Internal Revenue, Baltimore, Md.

3. If the address of the collector is not printed on the return and you do not know it, ask at the post office or bank.

IX. WHEN AND TO WHOM THE TAX MUST BE PAID.

1. The tax should be paid, if possible, by sending or bringing with the return a check or money order drawn to the order of "Collector of Internal Revenue at [insert name of city and State]."

2. Do not send cash through the mail, nor pay it in person, except at the office of the collector or a regularly established internal revenue stamp office.

3. The tax may be paid in four equal installments as follows:

The first installment shall be paid at the time fixed by law for filing the return, and the second installment shall be paid on the 15th day of the third month, the third installment on the 15th day of the sixth month, and the fourth installment on the 15th day of the ninth month, after the time fixed by law for filing the return.

4. The total tax may be paid at the time of filing the return, or if not so paid, one installment may be paid and the balance may be paid in installments, or in full, on or prior to any subsequent installment date referred to above. Failure to pay any installment on the date fixed by law makes the taxpayer liable for the payment of the balance of tax due upon notice and demand by the Collector.

X. PENALTIES.

For Making False or Fraudulent Return.

Not exceeding $10,000 or not exceeding one year's imprisonment, or both, in the discretion of the court, and, in addition, 50 per cent of the tax evaded.

For Failing to Make Return on Time.

Not more than $1,000 and, in addition, 25 per cent of the amount of tax due.

For Failing to Pay Tax when Due, or Understatement of Tax Through Negligence.

Five per cent of the tax due but unpaid, plus interest at the rate of 1 per cent per month during the period in which it remains unpaid.

NET LOSSES.—If for any taxable year beginning after October 31, 1918, and ending prior to January 1, 1920, it appears upon the production of evidence satisfactory to the Commissioner that any taxpayer has sustained a net loss, the amount of such net loss shall under regulations prescribed by the Commissioner with the approval of the Secretary be deducted from the net income of the taxpayer for the preceding taxable year; and the taxes imposed by this title and by Title III for such preceding taxable year shall be redetermined accordingly. Any amount found to be due to the taxpayer upon the basis of such redetermination shall be credited or refunded to the taxpayer in accordance with the provisions of section 252. If such net loss is in excess of the net income for such preceding taxable year, the amount of such excess shall under regulations prescribed by the Commissioner with the approval of the Secretary be allowed as a deduction in computing the net income for the succeeding taxable year. (See Articles 1601-1603, Regulations 45.)

TABLES AND INSTRUCTIONS FOR CALCULATION OF SURTAX

SURTAX RATES FOR 1918-19.

Amount of net income.	Rate.	Total surtax on each amount.	Amount of net income.	Rate.	Total surtax on each amount.
A	B	C	A	B	C
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

CALCULATION OF SURTAX AT 1918-19 RATES.

[illegible]

1. ITEM.	2. Enter in this column	3. Computation of surtax on items in right of this return
1. Largest sum in column A which is less than the amount of the total net income	$[illegible]	$
2. Total surtax thereon shown in column C	[illegible]	$
3. Remainder of net income after subtracting Item 1, above	[illegible]	$
4. Surtax on this remainder at rate shown in column B on line below that from which Item 1 was taken	[illegible]	$
5. Total surtax due (sum of Items 2 and 4)	[illegible]	$

[illegible]

CALCULATION OF SURTAX AT PRIOR-YEAR RATES.

[illegible]

SURTAX RATES FOR 1917.

Amount of net income.	Rate.	Amount of surtax at each rate.
A	B	C
[illegible]	[illegible]	[illegible]

SURTAX RATES FOR 1916.

Amount of net income.	Rate.	Amount of surtax at each rate.
A	B	C
[illegible]	[illegible]	[illegible]

SURTAX RATES FOR 1913-15.

[illegible]	[illegible]	[illegible]

1.	2.	3.	4. (Per cent.)	5.
1. $	$	$		$
2.				
3.				
4.				
5.				
6.				
Total				$

[illegible]

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Exhibit "B" (continued)

Page 2 of Instructions

INSTRUCTIONS FOR FILLING IN INDIVIDUAL INCOME TAX RETURN

A. INCOME FROM BUSINESS OR PROFESSION.

Report here income from—

(a) Sale of merchandise, or of products of manufacturing, construction, mining, and agriculture. (For farm income see Instruction V on this page—in lieu of this sheet.)

(b) Business service, such as transportation, storage, laundering, hotel and restaurant service, livery and garage service, etc., if you entered the business. If you were employed in the business as an employee, report your salary or wages on Schedule B.

(c) A profession, such as medicine, law, or dentistry, if you practiced it on your own account. If you were employed on a salary, report your salary in Schedule B.

In general, report in Schedule A any income in the earning of which you incurred expense for labor, rent, etc. Do not report here partnership profits or profits of personal service corporations, which should be entered under C, or dividends from other corporations, which should be entered under K (a).

If you are a farmer or a farm owner renting your farm to another person on shares, enter on line 22 your net income from farming, as shown by your "Schedule of Farm Income and Expenses," Form 1040 F.

If you keep books showing income accrual, report such income instead of cash received, and report expenses incurred instead of expenses paid.

Income received from sale of bonds, profits on purchase of stocks, bonds and other property not dealt in as a business, and from liquidating dividends, should be reported under D.

If you have a complete profit and loss statement, showing all the information called for under "Cost of goods sold" and "Other business deductions," attach it to the return and enter the amount of net income on line 21, Schedule A.

Kind of business.—State kind of goods dealt in or kind of service rendered, and whether manufacturer, rubber, wholesaler, retailer, importer, broker, etc.

Total gross sales (income must be gross of profits).—Report the total amount derived from sales or from services, but any discounts or allowances from the sale price or service charge.

Inventory.—Write "(C)" or "(F)" on lines 9 and 10 immediately before the amounts entered, to indicate that inventories are valued at either cost, or cost or market, whichever is lower.

Inventories at the end of the taxable period must be valued on the same basis as those at the end of the preceding taxable period, unless permission to make a change has been obtained from the Commissioner of Internal Revenue. Any taxpayer carrying inventories at cost on a basis made under Section 746 (a) 19 or the Act here been allowed, the carrying inventory must be correspondingly adjusted. (See Articles 936, and 1581-1586, Regulations 45.)

Other business deductions.—Do not include cost of business equipment or furniture, expenditures for replacements of not previously charged off, or personal, living or family expenses.

Salaries.—Enter on lines 11 all salaries and wages not reported as "Labor" under "Cost of goods sold." Salary or wages paid to your sons or daughters in the service of your business must be reported as income in Schedule B.

Rent.—Enter on line 12 rents for property used in connection with you have no equity. Do not include rent for dwelling you occupy for residential purposes.

Interest.—Enter on item 11 interest on business indebtedness to others. Do not include interest on your capital stock or other investment in the business.

Taxes.—Enter on lines 13 taxes on business property or for carrying on business. Do not include taxes assessed against local benefits of a kind tending to increase the value of the property assessed, as for paving, sewers, etc., nor Federal income taxes.

Repairs, wear and tear, obsolescence, and property losses.—Enter on lines 14, (a) ordinary repairs required to keep property in usable condition, (b) reasonable allowance for exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence, and (c) losses of business property by fire, storm, accident, casualty, or theft, not compensated for by insurance or otherwise and not charged good by certain claimed as deductions. Explain these deductions in table at foot of page 2 of return.

Losses due to causes enumerated under (c) with respect to property not used in your business, such as your dwelling or personal property, should be reported in Schedule I.

Depreciation.—The amount claimed for wear and tear (depreciation), including obsolescence, should not exceed the original cost of the property (or its value March 1, 1913, if acquired before that date) divided by its estimated life in years. If obsolescence is claimed, state in table at foot of page 2 why useful life is less than actual life. When the amount of depreciation and obsolescence allowed equals the cost of the property (or its value March 1, 1913), no further claim should be made.

Do not claim any deduction for depreciation in the value of a building occupied by you as a dwelling, or of other property held for personal use. Do not claim any deduction for depreciation of real estate (exclusive of improvements thereon), nor for depreciation of stocks, bonds, and other securities.

Depreciation of patents, copyrights, etc., and depletion of mines, etc.—If you claim a deduction on account of depreciation in the value of patents, copyrights, trade-marks and trade and other legal privileges, or on account of depletion of mines or oil and gas wells, see Regulations 45.

Depreciation of use facilities.—If amortization of use facilities is claimed, the taxpayer is required to submit with this schedule the information and file a claim called for in Articles 161 to 165 of Regulations 45.

Bad debts.—Enter on lines 15 only debts arising from sales of professional services which in an accrual basis to be worthless and have charged off during the year.

A bad debt allowing income accrued a note March 1, 1913, will not be allowed as a deduction unless the amount was included in the income reported for the year in which the debt is charged off. In the case of debts existing prior to March 1, 1913, only their value on that date may be deducted upon subsequently ascertaining them to be worthless.

State under "Explanation of deductions," at foot of page 2, how the debts were ascertained to be worthless. Insolvency of the debtor, inability to collect by legal proceedings, or inability of debtor to pay as ascertained by a mercantile agency, should be a satisfactory evidence of worthlessness.

A debt previously charged off as bad must be returned as income for the year in which collected.

Bad debts arising out of personal loans should be reported in Schedule I.

Net loss.—If the net loss of your business for the year is more than the total amount of sales and deductions from income for professional services, report the difference as a loss by entering red ink or a minus sign.

B. INCOME FROM SALARIES, COMMISSIONS, BONUSES, DIRECTOR'S FEES AND PENSIONS.

Do not report here pay, not exceeding $1,000, for active service in the military or naval forces of the United States received during the taxable year prior to the termination of the present war as fixed by proclamation of the President.

Under "Kind of business" enter whether employer is wholesaler, retailer, manufacturer, etc.

Report your total salary, wages, commissions, etc., received during the year from all sources, together with the corresponding information for your wife and employees, sons and daughters. The total of all other income from salaries, wages, commissions, etc., should be reported on a separate line.

C. INCOME FROM PARTNERSHIPS, PERSONAL SERVICE CORPORATIONS, AND FIDUCIARIES.

Report your share (whether received or not) in the profits of the partnership or personal service corporation or in the income of the estate or trust. Do not include in the part of such share that consisted of dividends or interest which will be included in item B, K (a), interest on obligations of the United States (see table 12, page 1 of the return, and instructions under A (b), below), or interest on corporation bonds and stocks. Any tax-free interest received through fiduciaries, upon which a tax of 1 per cent was paid (or will be paid) by the debtor corporation (to be included on item F).

No withholding of income tax at the source from property in interest upon tax-free covenant bonds owned by partnerships and personal service corporations was required prior to February 25, 1919.

Report in Schedule B ordinary received from partnership or personal service corporation.

Apportionment of partnership income between years.—If you derived income from a partnership or personal service corporation whose fiscal year differed from the calendar year, report in the return for the calendar year in which the fiscal year of the partnership or corporation ended the amount of income received from it during the calendar year, as follows:

(1) If the fiscal year ended in January, report 1/12 of the income received during the calendar year.

(2) If the fiscal year ended in February, report 2/12 of the income received during the calendar year.

(3) If the fiscal year ended in March, report 3/12 of the income received during the calendar year.

(4) If the fiscal year ended in April, report 4/12 of the income received during the calendar year.

(5) If the fiscal year ended in May, report 5/12 of the income received during the calendar year.

(6) If the fiscal year ended in June, report 6/12 of the income received during the calendar year.

(7) If the fiscal year ended in July, report 7/12 of the income received during the calendar year.

(8) If the fiscal year ended in August, report 8/12 of the income received during the calendar year.

(9) If the fiscal year ended in September, report 9/12 of the income received during the calendar year.

(10) If the fiscal year ended in October, report 10/12 of the income received during the calendar year.

(11) If the fiscal year ended in November, report 11/12 of the income received during the calendar year.

(12) If the fiscal year ended in December, report 12/12 of the income received during the calendar year.

If you were a member of a partnership or personal service corporation during a portion of the year 1918 as many months of your share of such income (except dividends and Liberty Bond interest received through the partnership or personal service corporation) as the number of months of the fiscal year that fell in the calendar year 1918, and in 1919 the remainder of your share of such income, except stock dividend and Liberty Bond interest, which should be apportioned as provided in instructions under A (a) and (b) below.

In the case of income to be distributed to the beneficiaries period early, whether or not a regular interim, each beneficiary must include in his return his distributive share of the net income, even though not yet paid him. If the taxable year on the basis of which he makes his return fails to coincide with the annual accounting period of the estate or trust, then he should include in his return for the year of such accounting period ending within his taxable year, which income will be taxable at the rates for the year in which the income was received.

D. PROFIT FROM THE SALE OF LAND, BUILDINGS, STOCKS, BONDS AND OTHER PROPERTY, AND FROM LIQUIDATING DIVIDENDS.

If the profits or losses on sales made through any one broker aggregated $2,000 or more, report the transactions on a separate line with the name and address of the broker.

Kind of property.—Describe the property as definitely as you can in a word or two, as "farm," "house," "stock," "bonds," etc.

Sale price or liquidating dividends.—State the actual consideration in prior, or, in case of an exchange, the fair market value of the property received in exchange.

Cost.—Enter the original cost of the property, or, if it was acquired before March 1, 1913, its fair market value on that date. Attach statement explaining how value of March 1, 1913, was determined. Expenses incidental to the purchase may be included in the cost if not claimed on income tax returns or deducted from them. Enter in column 7 the amount of wear and tear, obsolescence, or depletion sustained since March 1, 1913 (or since date of acquisition, if subsequent to March 1, 1913).

If property was acquired by you as a result of the death of a testator, enter in column 5 and 6 the value of the property as appraised for the purpose of the transfer tax, and report the difference as a loss by using red ink or a minus sign.

E. INCOME FROM RENTS AND ROYALTIES.

Kind of property.—Describe briefly, as in D.

Rental.—If you received property as part or in lieu of cash rent, report the income as though the rent had been paid in cash. Crops received as rent on a crop share lease should be reported as income for year in which disposed of (unless your return shows income accrual).

Repairs, wear and tear, obsolescence, depletion, and property losses.—See instructions for Schedule A, above. Explain in table at foot of page 2 of the return.

Other expenses.—Report interest on mortgages and interest on indebtedness secured by or confined to purchase or carry of property. Do not include interest accrued, against local benefits of a kind tending to increase the value of the property assessed.

F. INTEREST ON CORPORATION BONDS CONTAINING TAX-FREE COVENANT, ON WHICH TAX OF 2½ WAS PAID BY DEBTOR CORPORATION.

This item should include all interest received directly or through fiduciaries on bonds of corporations organized or doing business in the United States, containing the tax-free covenant, the debtor corporation agreeing to pay the interest without any deduction for taxes, provided exemption from withholding was not claimed by the owner of the bonds. Such interest was claimed by

yellow certificate. Form 1031), the interest received must be reported in G. The amount of tax paid by the debtor corporation is treated as a credit against the tax due from 40, page 1 of the return), but not as an amount paid at the source should be reported as income in Schedule G, line 4.

G. OTHER INCOME (NOT INCLUDING DIVIDENDS, OR INTEREST ON OBLIGATIONS OF THE UNITED STATES).

Report in this schedule interest on bank deposits, notes, mortgages, etc., and all other taxable income for which no place is provided elsewhere on this return.

I. GENERAL DEDUCTIONS.

Interest.—Report here interest paid on personal indebtedness as distinguished from business indebtedness (which should be reported under A or E above). Do not include interest on your capital stock or other investment in the business. Do not include interest on which is exempt from tax, except interest on indebtedness incurred to purchase or carry obligations of the United States issued after September 24, 1917.

Taxes.—Report here personal taxes paid, and all taxes on property not used in business or profession, not including those imposed against local benefits of a kind tending to increase the value of the property. Do not include Federal income taxes, nor state or inheritance taxes.

Losses.—Report here losses of property not connected with your trade, business, or profession, sustained during the year from fire, storm, shipwreck, or other casualty, or from theft, which were not compensated for by insurance or otherwise. Do not include losses from transactions not entered into for profit. Losses claimed should be explained in table at foot of page 2.

Contributions.—Report here only contributions made within the year to corporations organized and operated exclusively for religious, charitable, scientific or educational purposes or for the prevention of cruelty to children or animals, and contributions to the political fund for our national establishment. The total amount of deductions extended is not to exceed 15 per cent of the net income computed without the benefit of this deduction. Therefore, if item 4, Schedule I, exceeds 15 per cent of the sum of items 34, page 1, plus item 4, then item 5 must be reduced to 15 per cent of such sum and your total net income must be recalculated accordingly.

Enter under "Explanation of deductions," at the foot of page 2 of the return, the name and address of each corporation to which you made contributions claimed as deductions, and the amount paid to each.

Bad debts and other deductions.—Bad debts arising out of loans should be reported here, and other proper deductions not claimed elsewhere. Attach detailed statement of all such deductions. Deductions claimed by traveling salesmen to cover meals and lodging should be fully explained in an attached statement setting forth the particulars of employment.

Amounts paid to beneficiaries.—If this return is filed for an estate in the process of administration, there may be deducted the amount of any income properly paid or credited to any legatee, heir or other beneficiary.

K (a). DIVIDENDS.

Enter on item K (a) all cash or stock dividends received during the year except (a) dividends paid by personal service corporations out of earnings accrued prior to December 31, 1917; and (b) stock dividends received during the taxable year which are not included in Item 12, columns 5, 6, and 7, page 1.

K (b). INTEREST ON OBLIGATIONS OF THE UNITED STATES ISSUED SINCE SEPTEMBER 1, 1917.

Interest upon First Liberty Loan, 3½ per cent bonds and Victory Liberty Loan 4½ per cent convertible gold notes is exempt from normal income tax and included additional income taxes, commonly known as surtaxes, upon all incomes over $5,000. Interest upon First Liberty Loan 4 per cent bonds and interest upon certificates of indebtedness and War Savings Certificates is exempt from normal income tax regardless of the amount of the principal and aggregate from consideration additional income taxes, commonly known as surtaxes, only to the extent provided for in the act authorizing the issue and subsequent acts. If your holdings exceed the exemptions specified in Item 13, page 1, secure Form 1078 from collector and compute taxable interest. Interest on War Finance Corporation bonds is exempt from all normal income tax and is exempt from surtax only with respect to a principal not exceeding $5,000. This exemption is in addition to the exemptions above allowed.

K (c). OTHER INCOME FROM PARTNERSHIPS, PERSONAL SERVICE CORPORATIONS, AND FIDUCIARIES.

Report here all other income received from partnerships, personal service corporations and fiduciaries, which should be entered in Item 14(b), column 7, page 1.

L. PARTS OF INCOME SUBJECT TO RATES FOR DIFFERENT YEARS.

In determining the income, any deductions, exemptions, or credits of a kind ordinarily and properly chargeable against the income taxable at the rates for a preceding year shall first be applied against the income subject to rates for the most recent

extended year, but any balance thereof shall be applied against the income subject to the rates of the next preceding year or years until fully allowed.

74 II. *General traverse*

No demurrer, plea, answer, counterclaim, setoff, claim of damage demand, or defense in the premises having been entered on the pa of the defendant, a general traverse is entered as provided Rule 34.

III. *Argument and submission*

On January 8, 1925, this case was argued and submitted on meri by Mr. A. L. Humes, for the plaintiffs, and by Mr. Thomas Lewis, jr., for the defendant.

IV. *History of proceedings*

On suggestion of the death of Charles E. Herrmann, one of th plaintiffs, made in open court by Mr. A. L. Humes, leave was grant to proceed in the names of the surviving plaintiffs.

On January 26, 1925, the court filed findings of fact and conclusion of law, and entered judgment in favor of the plaintiffs in th sum of $905,225.73, with interest. The court also filed a memorandum.

On February 28, 1925, the defendant filed a motion for a new tria

On March 13, 1925, the plaintiffs filed a motion to amend th judgment.

On March 23, 1925, the court filed an order vacating, setting aside and withdrawing the judgment entered January 26, 1925, filed new conclusion of law, and entered a new judgment.

This new conclusion of law will be found on page 80 of th record.

75 VI. *Findings of fact, conclusion of law (as amended March 23, 1925), and memorandum by the court*

January 26, 1925

[Title omitted.]

This case having been heard by the Court of Claims on a stipulation of facts signed by Humes, Buck & Smith, attorneys for plaintiff, and by Robert H. Lovett, Assistant Attorney General, for the defendant, the court, in accordance with said stipulation, makes the following

Findings of fact

I

The plaintiffs, John J. Mitchell and Augustine L. Humes, are the surviving executors of the last will and testament of Dellora R. Gates, deceased, the third executor, Charles E. Herrmann, having died since the filing of the petition herein.

II

The said John J. Mitchell and Augustine L. Humes are citizens of the United States, the said John J. Mitchell being a resident of the city of Chicago, county of Cook, and State of Illinois, the said Augustine L. Humes being a resident of the borough of Spring Lake, county of Monmouth, and State of New Jersey, and each of them having at all times borne true allegiance to the Government of the United States and not in any way aided, abetted, or given encouragement to rebellion against the said Government, or at any time aided or abetted in any manner or given comfort to any sovereign or government that is or ever has been at war with the United States.

III

Dellora R. Gates was a citizen of the United States, and resided at Port Arthur, Jefferson County, and State of Texas, and died at the Hotel Plaza, in the city, county, and State of New York on the 28th day of November, 1918. The said Dellora R. Gates had at all times prior to her death borne true allegiance to the Government of the United States, and had not in any way aided, abetted, or given encouragement to rebellion against the said Government, or at any time aided or abetted in any manner or given comfort to any sovereign or government that is or ever has been at war with the United States.

IV

The said Dellora R. Gates died leaving a last will and testament with codicil thereto, which will and codicil were duly probated in the county court of Jefferson County, State of Texas, on January 6, 1919, and letters testamentary thereon were issued to said executors by said county court on the 6th day of January, 1919, and the said executors thereupon duly qualified as such, and said appointment of said executors still remains in full force and effect. A certified copy of said last will and testament and codicil thereto and of said letters testamentary are annexed to the petition as Exhibit "A," and are by reference made a part of this finding. Plaintiffs have been continuously executors of the said estate from the time of the issuance of said letters testamentary down to the time of the filing of the petition herein.

V

The said Dellora R. Gates in and by said will and codicil made certain money bequests to legatees, and made certain specific bequests and devises to certain legatees and devisees, bequeathing and devising to them certain personal and real property, which property was not income-producing, and produced no income during the year 1919.

All the rest and residue of the property, both real, personal a mixed of every kind and character of which said Dellora R. Gat deceased, was seized and possessed, was bequeathed and devised by general legacy and devise by said Dellora R. Gates to trustees trust, the net income to be paid over as provided in article "fift first" of the said last will and testament. Dellora F. Angell (n Dellora A. Norris) and Edward J. Baker, the persons named in sa article "fifty-first," were both living at the death of said Dello R. Gates, and are both living at the present time.

VI

The said executors, in their capacity as executors of the esta of said Dellora R. Gates, during the year 1919 and prior to the 31 day of December, 1919, collected all the income and earnings on an from the property and assets of the said estate of Dellora R. Gate all of said income and earnings collected being collected from stoc bonds, choses in action, and personal property, except that $272.1 of said income so collected was collected from real property, an none of said income or earnings was collected from property specifi cally bequeathed or devised by said will or codicil of said Dello R. Gates, deceased. Of said income and earnings so collected b said executors the sum of $75,033.97 was applied by them for th support, education, and maintenance of Dellora F. Angell, i
77 accordance with the provisions of Subdivision "I" of arti cle "fifty-first" of the said last will and testament, and a the remainder of said income and earnings so collected by sai executors was used and applied by them in their capacity as suc executors in and towards the payment of the United States of th "estate tax" (imposed by the act of September 8, 1916, and amend ments thereto by the acts of March 3, 1917, and October 3, 1917) an other valid claims or charges against said estate.

The gross amount of income received by the executors from th said estate for the year 1919 was less than the amount of the sai "estate tax" paid by them to the United States.

In conformity with the practice and rules and regulations of th Treasury Department under sections 223–225 of the revenue ac of 1918, the said executors, during the year 1920 and within the tim prescribed by law, and on March 14, 1920, made and filed with th collector of internal revenue of Albany, New York, a return of a the income received during the year 1919 by said executors in thei capacity as executors of the estate of said Dellora R. Gates, de ceased. In said income tax return said executors did not claim deduction under the provisions of section 214 of the revenue ac of 1918 for the whole or any part of the sum of $2,927,762.64, whic was the amount of "estate tax" payable by and chargeable agains said estate as shown by the return for "estate tax" filed by sai executors on or about the 26th day of November, 1919, with th collector of internal revenue for the district in which Port Arthur

xas, is situated, and of which amount of "estate tax" $1,000,000 s paid by said executors to said collector on the 25th day of Feb- ary, 1920, and the balance of which amount of "estate tax" was id by said executors to said collector on the 27th day of May, 1920. id executors did not claim a deduction for said amount of "estate x" for the reason that the regulations and rulings of the Commis- oner of Internal Revenue and the Secretary of the Treasury, and, nong others, article 134 of Regulations 45, forbade and refused to low any deduction of any part of the "estate tax" upon the said tate.

At the time when in the year 1920 the executors made and filed aforesaid their said return of income received and collected by em as such executors during the year 1919, the regulations and lings of the Commissioner of Internal Revenue and the Secretary f the Treasury forbade and refused to allow any deduction from id income so received and collected during the year 1919 of any art of the "estate tax" upon said estate, and neither the decision of he Court of Claims nor the decision of the Supreme Court of the nited States in the case of United States v. Woodward, 256 U. S. 32, had been rendered. The income tax computed upon the amount f income received by said executors as set forth in their said re- urn, without making any deduction for "estate tax," amounted to he sum of $905,225.73. A copy of said income tax return is, together ith the instructions printed on the return, annexed to the petition s Exhibit "B" and made a part of this finding by reference. The aid executors on or about March 15, 1920, made payment, under rotest, of the first quarterly installment of the said sum of $905,- 225.73 in order to avoid the imposition of penalties and in- 78 terest by the Commissioner of Internal Revenue and the col- lector of internal revenue at Albany, New York, and to avoid listraint or other summary proceedings or other proceedings for the enforcement and collection of taxes consequent upon the failure or refusal to pay the tax as computed in accordance with the said regulations and rulings. Thereafter pursuant to said regulations and rulings and in accordance with the practice of the Treasury Department in such cases the collector of internal revenue at Albany, New York, made three several demands on the said executors for the payment of the second, third, and fourth quarterly installments of said tax respectively. In order to avoid the imposition of penalties and interest by the Commissioner of Internal Revenue and the col- lector of internal revenue at Albany, New York, and to avoid dis- traint or other summary proceedings or other proceedings for the enforcement and collection of the taxes consequent upon failure or refusal to pay the tax in accordance with said regulations, rulings, and demands said executors made the payments, under protest, of the second, third, and fourth quarterly installments of the said tax for the year 1919 amounting in the aggregate to a total $678,919.30 which, together with the first quarterly installment amounted in

the aggregate to a total sum of $905,225.73; that the said secon third, and fourth quarterly installments were paid to the collect of internal revenue at Albany, New York, in equal quarterly pa ments on or about the fifteenth days of June, September, and D cember, respectively, in the year 1920.

VII

On January 6, 1922, said executors duly filed an application wi the collector of internal revenue at Albany, New York, prayi for the refund of all of said income tax for the year 1919 so paid, the ground that the "estate tax" was deductible in computing sa income tax. Said application for refund was in all respects co plete, regular, and in due form, but was denied and rejected by t Commissioner of Internal Revenue and the Secretary of the Tre ury, who still deny and refuse to pay said executors the money ask for and demanded in said application.

VIII

The said sum of $905,225.73 so paid by said executors as and fo tax as aforesaid was received and is still retained by the Unit States.

IX

The said executors in their capacity as such are the sole owne of the claim sued upon herein and no assignment or transfer of sa claim or any part thereof or any interest therein has been made.

X

No action upon this claim other than as herein set forth has be taken before Congress or other of the departments of the Gover ment or in any court other than the petition filed in this court.

79 XI

On or about the 14th day of February, 1923, the Commissioner Internal Revenue, acting of his own motion and not in respect of a claim filed by the said executors, notified the said executors that t "estate tax" paid as aforesaid had been allowed as a deduction computing the income tax payable with respect to the income of sa estate received during the year 1920, and offered to remit the tax with respect to said income received during the year 1920 so far said taxes had not been paid, and to refund such part of said tax as had been paid, but the said executors refused and still refuse accept such application of said "estate tax," or remission or refu of said taxes in respect of income received during the year 1920, any part thereof, and then demanded and still do demand that sa

estate tax" be allowed as a deduction in computing the tax payable respect of income received during the year 1919.

In the income tax return filed in 1920, of income received during ie year 1919, as set forth in Finding VI hereof, said executors did ot claim any deduction under the provisions of section 214 of the evenue act of 1918 for any inheritance tax, for the reason that the egulations and rulings of the Commissioner of Internal Revenue nd the Secretary of the Treasury, and, among others, article 134 f Regulations 45, forbade and refused to allow any deduction of any art of the inheritance taxes upon the said estate.

XII

During the year 1919 there became due and payable by the execu- rs of the estate of Dellora R. Gates the inheritance tax imposed y the State of Texas, amounting to the sum of $357,739.34, which m the executors paid to the State of Texas on the 27th day of lay, 1919. By the terms of the will of the said Dellora R. Gates the xecutors were required to pay said inheritance tax from the residu- ry estate, which was bequeathed and devised in trust as aforesaid. y the laws of the State of Texas the said executors were required o pay said inheritance tax and were subject to statutory penalties or noncompliance with the said requirement and to liability for aid tax. In the income-tax return aforesaid the executors did not laim a deduction for the said sum of $357,739.34 for the reason that he regulations and rulings of the Commissioner of Internal Revenue nd the Secretary of the Treasury forbade and refused to allow any eduction for any part of said inheritance tax. Said inheritance tax as paid to the State of Texas on the respective legacies and devises et forth in the will and the amount thereof was paid out of and de- ucted from the residuary estate.

XIII

At the time when in the year 1920 the executors made and filed heir said return of income received and collected by them as such xecutors during the year 1919, the regulations and rulings of the ommissioner of Internal Revenue and the Secretary of the Treas- ury forbade and refused to allow any deduction from said 0 income so received and collected during the year 1919 for any part of any inheritance tax paid upon or in respect of said tate or any part thereof.

XIV

On January 6, 1922, said executors duly filed an application ith the collector of internal revenue at Albany, New York, pray- g for the refund of said income tax for the year 1919 paid as set rth in Finding VI, on the ground that said inheritance tax paid

to the State of Texas was deductible in computing said inco tax. Said application for refund was in all respects comple regular, and in due form, but was denied and rejected by the Co missioner of Internal Revenue and the Secretary of the Treasu who still deny and refuse to pay said executors the money as for and demanded in said application.

XV

The said sum of $905,225.73, so paid by said executors as and a tax as aforesaid was received and is still retained by the Uni States.

XVI

The said executors in their capacity as such are the sole own of the claim sued upon herein, and no assignment or transfer of s claim or any part thereof or any interest therein has been made.

XVII

If said inheritance tax paid as aforesaid to the State of Te had been allowed as a deduction in computing the income tax paya with respect to the income received during the year 1919 as aforesa said income tax would have been reduced by the sum of $261,149.

Conclusion of law

Upon the foregoing findings of fact the court decides, as a conc sion of law, that the plaintiffs are entitled to recover $905,225. against which the United States has an offset in the sum of $3 931.57 for income tax payable in the year 1921 in respect of the y 1920. It is therefore adjudged and ordered that the plaintiffs cover of and from the United States the sum of nine hundred a five thousand two hundred and twenty-five dollars and seventy-th cents($905,225.73) with interest thereon at 6 per cent from the spective dates of payment in 1920, to wit, on one-fourth thereof fr March 15, 1920; on one-fourth thereof from June 15, 1920; on o fourth thereof from September 15, 1920; and on the remaini one-fourth thereof from December 15, 1920, less the sum of $3 931.57 with interest thereon at 6 per cent from the following da to wit, interest on one-fourth thereof from March 15, 1921; inte one one-fourth thereof from June 15, 1921; interest on one-fou thereof from September 15, 1921; and interest on the remaining o fourth thereof from December 15, 1921.

Memorandum

This case, in the opinion of the court, is controlled by the deci of the Supreme Court in the case of United States v. Woodwa 256 U. S. 632. The judgment awarded is predicated upon said c

81 *VII. Judgment*

At a Court of Claims held in the city of Washington on the 23rd day of March, A. D. 1925, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the plaintiffs and do order and adjudge that the plaintiffs, as aforesaid, are entitled to recover and shall have and recover of and from the United States the sum of nine hundred and five thousand two hundred and twenty-five dollars and seventy-three cents ($905,225.73), with interest thereon at six per cent from the respective dates of payment in 1920, to wit, on one-fourth thereof from March 15, 1920; on one-fourth thereof from June 15, 1920; on one-fourth thereof from September 15, 1920; and on the remaining one-fourth thereof from December 15, 1920, less the sum of $381,931.57, with interest thereon at six per cent from the following dates, to wit, interest on one-fourth thereof from March 15, 1921; interest on one-fourth thereof from June 15, 1921; interest on one-fourth thereof from September 15, 1921; and interest on the remaining one-fourth thereof from December 15, 1921.

BY THE COURT.

VIII. Petition for appeal

Filed April 21, 1925

From the judgment rendered in the above-entitled cause on the 23rd day of March, 1925, in favor claimants, the defendants, by their Attorney General, on the 21st day of April, 1925, make application for and give notice of an appeal to the Supreme Court of the United States.

HERMAN J. GALLOWAY,
Assistant Attorney General.

IX. Order allowing appeal

It is ordered by the court this 4th day of May, 1925, that the defendant's application for appeal be, and the same is, allowed.

82 In Court of Claims of the United States

[Title omitted.]

Clerk's certificate

I, F. C. Kleinschmidt, assistant clerk, Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of a history

of the proceedings; of the findings of fact, conclusion of law (as amended), and memorandum by the court; of the judgment of the court; of the defendant's application for appeal; of the order of the court allowing said application.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington City this 9th day of May, A. D. 1925.

[SEAL.] F. C. KLEINSCHMIDT,
Assistant Clerk, Court of Claims.

[Indorsement on cover:] File No. 31184. Court of Claims. Term No. 470. The United States, appellant, vs. John J. Mitchell et al., as executors of the last will and testament of Dellora R. Gates, deceased. Filed May 14th, 1925. File No. 31184.

○

INDEX

AUTHORITIES CITED

In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 470

THE UNITED STATES, APPELLANT

v.

JOHN J. MITCHELL ET AL., AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF DELLORA R. GATES, DECEASED

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The Memorandum Opinion of the Court of Claims is reported in 60 Ct. Clms. 451. (R. 46.)

GROUNDS OF JURISDICTION

The judgment to be reviewed was entered March 23, 1925. (R. 47.) Petition for appeal was filed April 21, 1925, and allowed May 4, 1925. (R. 47.) The jurisdiction of this Court is based on Sections 242 and 243 of the Judicial Code as they stood prior to the Act of February 13, 1925.

STATEMENT

The questions presented

This case presents two questions relating to the deductibility of taxes in the computation of net taxable income under the Revenue Act of 1918. One relates to the deduction of a Federal estate tax, and the other to a deduction of an inheritance tax imposed under the laws of Texas.

The deductibility of the Federal estate tax is admitted. The controversy relates to the year in which the deduction should be taken. The question is whether a Federal estate tax, liability for which accrued in 1919, but which was paid in 1920, may be deducted by executors from their gross income for the year 1919, in a case where their method of accounting and income-tax return was on a receipts and disbursements basis, as distinguished from the accrual basis.

With respect to the deduction of the inheritance tax paid to the State of Texas, there is no controversy about the year in which the deduction should be made, if it is to be allowed. The question is whether the Texas inheritance tax is deductible by the executors from the gross income of the estate, or whether the deduction is allowable to the legatees or distributees on their individual income-tax returns.

The Texas inheritance tax accrued and was paid in 1919, so that if deductible by the executors it

was deductible in that year, without regard to the basis on which their accounts were kept and their returns made.

The facts relating to deduction of Federal estate tax

Dellora R. Gates, a citizen of the United States, died November 28, 1918 (R. 41), leaving a will of which the appellees are executors. They brought this suit in the Court of Claims to recover income taxes on their income as executors for the year 1919, alleged to have been illegally assessed and collected, a claim for refund having been filed and denied.

The Federal estate tax on the decedent's estate became due one year after her death, on November 28, 1919. The Federal estate tax return was filed November 26, 1919, and the estate tax was actually paid in 1920. (R. 43.) The amount of the Federal estate tax paid in 1920 exceeded the gross income of the executors for the year 1919. (R. 42.) If the amount of the Federal estate tax had been deducted from the gross income of the executors for 1919, there would have been no net income and no income tax for the year 1919. The executors did not make the deduction and the income tax for 1919 actually paid was $905,225.73. (R. 43.) The deduction was not taken, because, prior to the decision, in 1921, of the case of *United States* v. *Woodward,* 256 U. S. 632, the Treasury Regulations forbade the deduction of a Federal estate tax.

After the decision in the *Woodward case,* holding that the Federal estate tax is a deductible item, the executors seasonably filed a claim for refund (R. 44), which was denied.

The Bureau of Internal Revenue offered to allow the executors to deduct the Federal estate tax from gross income for the year 1920, in which year the estate tax was paid.

The Court of Claims, on the supposed authority of *United States* v. *Woodward, supra* (R. 46), held that the Federal estate tax was deductible in computing taxable income for the year 1919, and awarded judgment to the executors for the difference between $905,225.73, the income tax paid for 1919, and an admitted offset (R. 5–6) in favor of the United States on account of unpaid income taxes for 1920 amounting to $381,931.57, the net amount of the judgment being $523,294.16 (R. 47).

The material portions of the Revenue Act of 1918 (Act of February 24, 1919, Title II, Chap. 18, 40 Stat. 1057, 1058–1088), are as follows:

> SECTION 212. * * *
>
> (b) The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be), in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income,

the computation shall be made upon such basis and in such manner as in the opinion of the Commissioner does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 200 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year. * * *

Section 214(a) (3), 40 Stat. 1067, provides in part as follows:

(a) That in computing net income there shall be allowed as deductions: * * *

(3) Taxes paid or accrued within the taxable year imposed (a) by the authority of the United States, except income, war profits, and excess-profits taxes; * * * (c) by the authority of any State or Territory, or any county, school district, municipality, or other taxing subdivision of any State or Territory, not including those assessed against local benefits of a kind tending to increase the value of the property assessed * * *.

Section 200, 40 Stat. 1059, provides, in part, as follows:

* * * The term "paid," for the purposes of the deductions and credits under this title, means "paid or accrued" or "paid or incurred," and the term "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under section 212.

The method of accounting regularly employed by the executors in keeping their books is not clearly disclosed by the Record. We believe it will not be disputed that they kept their accounts on a receipts and disbursements basis, as distinguished from the accrual basis. Their return of taxable income for the year 1919 was on the receipts and disbursements basis. In their income tax return for 1919, in response to a question as to the basis on which the return was made, the executors stated that it was made on a receipts and disbursements basis. This return is found as Exhibit B to the petition and findings. (R. 36.) This exhibit, read with a magnifying glass, shows, near the top of page 36, the following instruction:

> Write "R" if this return shows income received or "A" if it shows income accrued.

Written in the space provided for the answer is, "R."

Facts relating to the Texas inheritance tax

During the year 1919 there became due and payable by the executors an inheritance tax imposed by the State of Texas, amounting to $357,739.34, which amount was, in fact, paid by the executors to the State of Texas May 27, 1919. (R. 45.) The statutes of the State of Texas under which these inheritance taxes were imposed and paid are set forth in an appendix to this brief. The taxes imposed under the Texas law were upon the amounts

of the legacies to various legatees, and the rate as to each legacy depended upon the amount of the legacy and the relationship between the decedent and the legatee. The inheritance taxes were not imposed upon the estate as a whole. It was made the duty of the executors to pay the inheritance taxes for the heirs or legatees.

Article 7494, Chap. 10, of Vernon's Sayles' Texas Civil Statutes, 1914, provides, with respect to the payment of legacies and distributive shares, that—

> If such property be in the form of money, the executor, administrator or trustee shall deduct the amount of the tax therefrom before paying it to the party entitled thereto; if it be not in the form of money, he shall withhold the property until the payment by such party of the amount of tax; in any case the executor, administrator or trustee shall be liable for the amount of the tax and shall have the right, in case of neglect or refusal after due notice of the party entitled to the property to pay such amount, to sell, at public sale, after due notice to such party, the property, or so much thereof as may be necessary. Out of the sum realized on such sale, the executor, administrator or trustee shall deduct the amount of the tax and the expenses of the sale, and shall pay the balance to the party entitled thereto.

If the executors are denied the right to deduct the Federal estate tax in 1919, and are also denied the right to deduct the Texas inheritance taxes,

they will not be entitled to recover anything in this case. If allowed to deduct the Federal estate tax, the consideration of the Texas inheritance tax matter is made unnecessary, and the judgment of the Court of Claims would have to be affirmed as rendered.

If the deduction of the Federal estate tax is disallowed, but the Texas inheritance tax is held to be deductible, the amount of income tax for 1919 paid by the executors will be found to be too large by the amount of $261,149.72 (R. 46; Finding XVII); and in that event the judgment of the Court of Claims should be reversed with directions to grant judgment to the executors for the amount last stated, less any offsets existing in favor of the United States.

SPECIFICATION OF ERRORS TO BE URGED

(1) The Court of Claims erred in holding that the Federal estate tax was deductible in computing net taxable income for the year 1919, which was the year in which liability for the Federal estate tax accrued, and erred in not holding that, under the Revenue Act of 1918, since the executors kept their accounts and made their return on a receipts and disbursements basis, as distinguished from an accrual basis, the deduction of the Federal estate tax should have been made in computing net taxable income for the year 1920, which was the year in which the estate tax was paid.

(2) If the decision of the Court of Claims be construed as holding that the amount of the Texas inheritance taxes were deductible by the executors rather than by the legatees and distributees, it was in that respect erroneous.

ARGUMENT

SUMMARY

I. The Revenue Act of 1918 provided that taxes were deductible from gross income in the year in which they accrued or in the year in which they were paid, depending upon whether the taxpayer kept his books and made his returns on an accrual basis or on a receipts and disbursements basis.

The findings show that the appellees kept their books and made their return on a receipts and disbursements basis.

It follows that the Federal estate tax was deductible by the executors in 1920, the year in which it was paid, and not in the year 1919, in which the liability may be said to have accrued.

II. The decision in *United States* v. *Woodward*, 256 U. S. 632, is not an authority against the position of the United States in this case.

III. The Texas inheritance taxes were charges and burdens upon the legatees and not upon the executors, and a deduction of the amount of the Texas inheritance taxes should be taken by the legatees in their individual returns, and is not one to which the executors are entitled.

I

AS THE EXECUTORS KEPT THEIR BOOKS AND MADE THEIR RETURN ON A RECEIPTS AND DISBURSEMENTS BASIS, THE FEDERAL ESTATE TAX WAS DEDUCTIBLE IN THE YEAR IN WHICH IT WAS PAID AND NOT IN THE YEAR IN WHICH THE LIABILITY ACCRUED

The deductibility of the Federal estate tax by the executors in computing their net taxable income is not a matter of dispute. That right was settled in *United States* v. *Woodward*, 256 U. S. 632.

The controversy here is with respect to the year in which the deduction should be taken.

As was pointed out in *United States* v. *Anderson*, decided January 4, 1926 (46 Supreme Court Reporter, p. 131; Nos. 337 and 340, present term), the Revenue Acts of 1909 and 1913 provided for returns on a receipts and disbursements basis. Recognizing that good accounting methods often require accounts to be kept on an accrual basis, the Revenue Act of 1916, while permitting returns on a receipts and disbursements basis, contained a new section, 13 (d), to the effect that a taxpayer keeping his accounts on any basis other than that of actual receipts and disbursements was allowed to make his return on the basis on which his accounts were kept. This allowed the taxpayer the option to make his return on a receipts and disbursements basis, without regard to how he kept his books, or, if he kept his books on the accrual basis, to use the accrual method as the basis for his return.

The Act of 1916 was considered in the case of *United States* v. *Anderson, supra,* in which it was held that if the taxpayer kept his books and made his return on an accrual basis he must be consistent and treat all items on the same basis.

The Revenue Act of 1918, under which this case arose, made one change in respect to the basis for computing the tax and clarified the situation. Under Section 212 (b) of the Revenue Act of 1918, it was provided that—

> The net income shall be computed * * * in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as in the opinion of the Commissioner does clearly reflect the income.

This deprived the taxpayer of the option he had under the 1916 Act of making his return on a receipts and disbursements basis without regard to how he kept his books.

The 1918 Act required the taxpayer to make his return upon the basis employed in keeping his books. If he kept no books, or if his books were not properly kept to reflect income, the basis for the return and the computation of the tax was not one selected by the taxpayer, but one designated by the Commissioner.

The provision in Section 214(a) (3), of the 1918 Act allowed the deduction of " taxes paid or accrued within the taxable year."

Section 200 of the Revenue Act of 1918 provided that the term " paid or accrued " " shall be construed according to the method of accounting upon the basis of which the net income is computed under section 212."

These provisions are so clear as to require little discussion. The provision that taxes " paid or accrued " within the taxable year might be deducted within the taxable year did not mean that the deduction might be taken, at the option of the taxpayer, in any year in which the liability accrued or the taxes were paid. It meant that taxes were to be deducted in the year in which they were paid, if the method of accounting regularly employed in keeping the books of the taxpayer and on the basis of which the return was required to be made was the actual receipts and disbursements basis; and, in the alternative, taxes might be deducted in the year in which the liability accrued where the method of accounting employed by the taxpayer in keeping his books, and on the basis of which his return was required to be made, was the accrual basis.

The system thus adopted in 1918 has been continued, without substantial change, in the Revenue Act of 1921 (Sections 205 and 212 (a)), Act of November 23, 1921, Chap. 136, 42 Stat. 227, 232, 237,

and in the Revenue Act of June 2, 1924 (Sections 200(d) and 212(a), Chap. 234, 43 Stat. 253, 254, 267); and, since the enactment of the Revenue Act of 1918, the regulations issued by the Treasury Department conformed to these principles. (Regulations 45, Articles 21, 22, 23, 24, and 111.)

The statute contemplates, and the regulations have always required, consistency.

Under Article 23, Regulations 45, it was said:

> A method of accounting will not, however, be regarded as clearly reflecting income unless all items of gross income and all deductions are treated with reasonable consistency.

Montgomery, Income Tax Procedure, 1925 Ed., page 497, contains the following:

> Shortly stated, taxpayers must keep their accounts on a uniform basis—cash or accrual. They must avoid a " mixed " system.

The principle of consistency in the method or basis of keeping accounts and dealing with items of income and expense has been consistently followed. *Mutual Benefit Insurance Co.* v. *Herold,* 198 Fed. 199, 215; *United States* v. *Christine Oil & Gas Co.,* 269 Fed. 458, 459; *Maryland Casualty Co.* v. *United States,* 52 Ct. Cls. 201, 212.

The necessity for consistent treatment of all items on either one basis or the other was further developed in *United States v. Anderson, supra.*

In the case at bar, the executors kept their accounts on a receipts and disbursements basis. At

least, it appears they made their return on that basis, and as the law required them to make the return in accordance with the method of accounting adopted by them in keeping their books, it must be assumed that the basis used in the return was the basis on which their accounts were kept. If the findings are incomplete on this point, it must be resolved against the appellees, as the burden was on them, and they can not recover unless the findings affirmatively show that they kept their accounts and made their return on the accrual basis. *United States* v. *Anderson, supra.*

As the return disclosed income actually received, as distinguished from income accrued, the deductions were necessarily items actually paid, as distinguished from liabilities accrued.

The Federal estate tax was not paid in 1919, and consequently is not a deductible item, against the income of that year, in a return on the " R " basis.

II

THE DECISION IN UNITED STATES *v.* WOODWARD (256 U. S. 632), PROPERLY UNDERSTOOD, DOES NOT SUPPORT THE POSITION OF THE APPELLEES RESPECTING THE DEDUCTION OF THE FEDERAL ESTATE TAX

The *Woodward case* has been misunderstood. The claim that it supported the view that a tax, merely because it is a tax, cannot constitute an accrued liability until the date of payment arrives, was disposed of in *United States* v. *Anderson, supra,* decided January 4, 1926.

Now it is cited as authority for the proposition that in computing net taxable income under the Revenue Act of 1918 a tax is deductible in the year in which it accrued as a liability, or in the year in which it was paid, without regard to the taxpayer's accounting methods or to whether his return was on an accrual or on a receipts and disbursements basis.

Such misunderstanding as has existed respecting the *Woodward case* has been brought about by the manner in which that case was presented to the Court.

Woodward died December 15, 1917. The Federal estate tax became due December 15, 1918. It was paid by his executors on February 8, 1919. The principal controversy in that case was whether the Federal estate tax was deductible in computing net taxable income. The year in which the deduction could be taken, if the tax was deductible at all, was given scant consideration. The case arose under the very statute we are considering. There is nothing in the record in the *Woodward case* from which it may be ascertained whether the executors kept their accounts on an accrual basis or on a receipts and disbursements basis, and there is nothing in the Record which shows whether their return for 1918 was made on a receipts and disbursement basis or on an accrual basis other than the statement that they filed a return of income "received." The executors claimed the deduction as against income for 1918, and it was allowed to

them in that year as the result of the decision of this Court. Nowhere in the briefs for the United States or for the taxpayer is any mention made of Section 212(b) of the Revenue Act of 1918, which prescribed that the income should be computed in accordance with the method of accounting regularly employed in keeping the books of the taxpayer.

At the top of page 76 of the Government's brief in the *Woodward case* we find the vital provisions of Section 212(b) omitted and stars inserted. In no place, in no brief, was the attention of the Court called to Section 200 of the Revenue Act of 1918, which provided that the terms " paid or accrued " or " paid or incurred " " shall be construed according to the method of accounting upon the basis of which the net income is computed under section 212." This provision does appear in the appendix to the Government's brief, at the top of page 75, but buried among other statutes.

The United States seems to have presented that case on the theory that the provisions of Section 214(a), which allowed the deduction of " taxes paid or accrued within the taxable year," gave to the taxpayer the privilege of deducting in any year a tax which was either accrued or paid in that year, without regard to any other consideration.

The point which absorbed the attention of counsel in the *Woodward case* was whether a Federal estate tax was properly deductible, with the result

that proper attention was not given to the question of the year in which the deduction could be taken; and the provision of the 1918 Act, which allowed the deduction of taxes "paid or accrued" in the taxable year, *depending upon whether the taxpayer's accounts were kept and return made on the receipts and disbursements basis or on the accrual basis,* was completely ignored and never brought to the attention of the Court. The point that the Court could not determine in what year the estate tax was deductible without knowing on what basis the taxpayer kept his books and made his return was not suggested by counsel on either side. Forty-six pages of the Government's brief was given up to the question of whether a Federal estate tax is deductible at all. Pages 47–48 of the Government's brief dealt with the question of the year in which the deduction was to be taken. This extract, printed in an appendix to this brief (Appendix A), shows that counsel assumed that the Federal estate tax could be deducted in 1918 if it either accrued or was paid in that year, without regard to other considerations.

The brief for the taxpayers dealt very gingerly with the problem. After referring to the provision in Section 214, that a deduction may be taken for taxes paid or accrued, the taxpayers' brief disposed of the question by this statement (p. 15):

> The decedent died December 15, 1917, and this tax was due and payable, or accrued,

> December 15, 1918, and was paid by the executors February 8, 1919.

In its opinion, the Court refers to Section 214, making express provision for the deduction of "taxes paid or accrued within the taxable year." The concluding paragraph of the opinion is (p. 635):

> Here the estate tax not only "accrued," which means became due, during the taxable year of 1918, but it was paid before the income for that year was returned or required to be returned.

It is evident from the opinion that the Court did not have called to its attention Section 212 (b) or Section 200 of the Revenue Act of 1918, the consideration and application of which was vital, in order to determine in what year the deduction was allowable.

If, as a matter of fact, the executors in the *Woodward case* kept their accounts and made their returns on the receipts and disbursements basis, they were not entitled to the deduction of the Federal estate tax in the year 1918, because it was not paid until 1919. On the other hand, if they kept their accounts and made their return on an accrual basis, the deduction was properly allowable in computing net taxable income for the year 1918, because the Federal estate tax fell due in 1918, and, as was pointed out in the presentation of the case of *United States* v. *Anderson, supra,* liability for a Federal estate tax may properly be treated as accrued in the year in which the tax is payable, be-

cause, owing to the uncertain factors attending the determination of the amount, an earlier accurate estimate is not usually possible.

This discussion of the *Woodward case* makes it obvious, we believe, that the decision should not be considered authority for the proposition that a Federal estate tax is deductible either in the year in which the liability for it accrued or in the year in which it was paid, regardless of the basis on which the taxpayer's books were kept or his return made.

III

THE TEXAS INHERITANCE TAX IS NOT DEDUCTIBLE BY THE EXECUTORS FROM THE GROSS INCOME OF THE ESTATE, BUT IS A DEDUCTION WHICH SHOULD BE TAKEN BY THE LEGATEES IN THEIR INDIVIDUAL RETURNS

This subject has recently been dealt with at length in the case of *Keith* v. *Johnson*, No. 295, October Term, 1925, argued January 6, 1926, and not yet decided. We are not disposed to burden the Court by going over the same ground in this case. *Keith* v. *Johnson* involved the question whether the New York inheritance tax is deductible by the executors or by the legatees or distributees. The Texas statute and the New York statute are not unlike.

The Texas statute is set forth at length in an appendix to this brief (Appendix B). Under it, the inheritance tax is not upon the estate as a whole, but upon each individual legacy or distributive

share, and the amount of the tax on each legacy or share depends upon the size of the legacy or share and the relationship of the beneficiary to the decedent. While the payment is required to be made by the executor or administrator, he is making the payment for and on account of the legatee or heir and out of the distributee's share of the estate, and he is required to deduct the amount paid from each share as he distributes it. In case any refund is eventually made by the State, on account of the payment of an excessive inheritance tax, the refund is paid to the distributee, who has been charged with the excessive amount. If there be any case where the nature of an inheritance tax is such that the right to take the deduction belongs to the legatees or distributees, rather than to the executors or administrators, the Texas law presents it.

The deduction of a tax paid should be taken by the person on whom the burden of that tax has fallen, and by whom, in reality, it has been paid. The executors who pay the Texas inheritance tax are paying it for the account of and in discharge of a liability against the individual distributive shares. The income of an estate pending administration does not necessarily belong to the legatees in the proportions in which they take shares of the body of the estate, and to allow the deduction against gross income of the executors pending administration does not always give the benefit of the deduction to those upon whom the burden of the inheritance tax has fallen.

Some consideration should be given to the construction of the Revenue Acts by the officers charged with their enforcement. For years past the Treasury Department has consistently held that State inheritance taxes, imposed on the right to receive and computed on each separate legacy or distributive share, are deductible by the heir or legatee and not by the estate.

Regulations 65, Article 134.
Regulations 62, Article 134.
Regulations 45, Article 134.

Texas has been consistently classified by the Department among the States whose inheritance taxes are deductible by the distributees.

In the case of *Keith* v. *Johnson,* now under advisement, the situation was complicated by decisions of the courts of the State of New York, construing statutes of their own State, and the contention was made by the taxpayer that this Court is bound by the decisions of the New York courts with respect to the nature of the inheritance tax in that State.

No such difficulty exists in the Texas case. No Texas decisions have been pointed out which prevent this Court from forming its own opinion with respect to the nature of the Texas inheritance tax.

If *Keith* v. *Johnson* is decided in favor of the Collector, it will follow, necessarily, that, in the present case, the amount of the Texas inheritance tax was not a deduction to be taken by the executors.

If *Keith* v. *Johnson* is decided in favor of the taxpayer, and the decision proceeds on the theory that this Court is bound by the decisions of the New York courts, it will not follow that the Texas question must be decided against the United States.

CONCLUSION

It seems clear that the executors are not entitled to deduct the Federal estate tax from their gross income for the year 1919. The Texas inheritance tax, if deductible at all, was deductible from gross income for the year 1919.

The proper answer to the question involving the Texas inheritance tax law no doubt will be apparent when the decision in *Keith* v. *Johnson* is rendered.

Respectfully submitted.

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FEBRUARY, 1926.

APPENDIX A

[Extract from Government's brief in Woodward Case]

XIV

In this case, the estate tax accrued in 1917 and was paid in 1919. Hence, if otherwise deductible, it could not, by the very terms of the act, be deducted from the income for 1918.

Regardless of whether the argument thus far made is sound or unsound, the judgment in this case ought not to be affirmed. If the estate tax is a tax which Congress intended should be deducted from the income of the estate, in order to be deducted it must come within the class of taxes described in the act. The only taxes allowed to be deducted are: "Taxes paid or accrued within the taxable year." The tax in question is a death duty. A death duty accrues at the moment of the death, which is the occasion for its imposition. This was expressly decided in *Hertz* v. *Woodman,* 218 U.S 205, where, in speaking of an inheritance or succession tax imposed by the act of 1898, Mr. Justice Lurton said:

> But the liability for the payment of the tax exacted under section 29 of the act of June 13, 1898, accrued or arose the moment the right of succession by death passed to the defendants in error, and the occurrence of no other fact or event was essential to the imposition of a liability for the statutory tax upon the interest thus acquired. (Id., p. 220.)

In this case, this tax, which accrued in December, 1917, was not paid until February, 1919. To be deductible, the act requires that it must either have accrued or been paid during the year for which the income from which it is deducted is taxed. The utmost that can be claimed, therefore, is that it is a tax which was deductible from the income of either 1917 or 1919. It is sought, however, to deduct it from the income of 1918. It neither accrued nor was paid during that year, and hence, in no possible view of the case, is it deductible.

Appendix B

[Vernon's Sayles' Texas Civil Statutes 1914, Vol. 4]

Article 7487. *Property subject to the tax.*—All property within the jurisdiction of this state, real or personal, corporeal or incorporeal, and any interest therein, whether belonging to inhabitants of this state or not, which shall pass absolutely or in trust by will, or by the laws of descent of this or any other state, or by deed, grant, sale or gift made or intended to take effect in possession or enjoyment after the death of the grantor or donor, shall upon passing to or for the use of any person except the father, mother, husband, wife or direct lineal descendants of the testator, intestate, grantor or donor, or any public corporation or charitable, educational or religious organization within this state when such bequest, gift or devise is to be used for charitable, educational or religious purposes within this state, be subject to a tax for the benefit of the state, as follows:

1. If passing to or for the use of a lineal ascendant or a brother or sister, or a lineal descendant of a brother or sister, the tax shall be two per cent on any value in excess of two thousand dollars, and not exceeding ten thousand dollars; two and one-half per cent of any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; three per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dolars; three and one-half per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars; four per cent on any value in excess of one hundred thousand dollars, and not exceeding five hundred thousand dollars; and five per cent on any value in excess of five hundred thousand dollars.

2. If passing to or for the use of an uncle or aunt, or a lineal descendant of an uncle or aunt of the decedent, the tax shall be three per cent on any value in excess of one thousand dollars, and not exceeding ten thousand dollars; four per cent on any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; five per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars; six per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars; seven per cent on any value in excess of one hundred thousand dollars, and not exceeding five hundred thousand dollars; and eight per cent on any value in excess of five hundred thousand dollars.

3. If passing to or for the use of any other person, natural or artificial, the tax shall be four per

cent of any value in excess of five hundred dollars, and not exceeding ten thousand dollars; five and one-half per cent on any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; seven per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars; eight and one-half per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars; ten per cent on any value in excess of one hundred thousand dollars, and not exceeding five hundred thousand dollars, and twelve per cent on any value in excess of five hundred thousand dollars. (Acts 1907, p. 496, sec. 1.)

ART. 7488. *Property passing in two or more estates.*—If the property passing as aforesaid shall be divided into two or more estates, as an estate for years or for life and a remainder, the tax shall be levied on each estate or interest separately according to the value of the same at the death of the decedent. The value of estates for years, estates for life, remainders and annuities shall be determined by the "Actuaries' Combined Experience Tables," at four per cent compound interest.

ART. 7493. *County judge to regulate tax.*—Immediately upon the filing of the report of the appraisement, the county judge shall calculate and determine the amount of tax due on such property under this chapter, and shall in writing certify such amount to the collector of taxes, to the executor, administrator, or trustee, and to the person to whom or for whose use the property passes. Said tax shall be a lien upon such property from the death of the decedent until paid, and shall bear interest from such death until paid, unless payment

shall be made within six months after such death, in which case no interest shall be charged.

ART. 7494. *Property withheld until tax paid.*—If such property be in the form of money, the executor, administrator, or trustee shall deduct the amount of the tax therefrom before paying it to the party entitled thereto; if it be not in the form of money, he shall withhold the property until the payment by such party of the amount of tax; in any case the executor, administrator, or trustee shall be liable for the amount of the tax and shall have the right, in case of neglect or refusal after due notice of the party entitled to the property to pay such amount, to sell, at public sale, after due notice to such party, the property, or so much thereof as may be necessary. Out of the sum realized on such sale, the executor, administrator or trustee shall deduct the amount of the tax and the expenses of the sale, and shall pay the balance to the party entitled thereto.

ART. 7495. *Tax charged on real estate, when.*—Whenever any legacy subject to said tax shall be charged upon or payable out of real estate, the heir or devisee, before paying the legacy, shall deduct the amount of the tax therefrom, and pay the amount so deducted to the executor, administrator or trustee; the amount of the tax shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor or trustee in the same manner as the payment of the legacy itself could be enforced.

ART. 7496. *Tax paid, when.*—All taxes received under this act by any executor, administrator or trustee, shall be paid by him within thirty days thereafter to the collector of taxes of the county

whose county court has jurisdiction of the estate of the decedent. Upon such payment, the collector shall make duplicate receipts thereof; he shall deliver one to the party making payment, the other he shall send to the comptroller of public accounts, who shall charge the collector with the amount thereof, and shall countersign and affix his seal of office to such receipt and transmit same to the party making payment.

ART. 7497. *Collector to sue for, when.*—In case such tax shall not be paid to the collector of taxes within six months after the county judge has notified the amount thereof as hereinbefore provided, the collector shall commence an action to recover the amount of such tax against the executor, administrator or trustee, and the party to whom or for whose use the property has passed; provided, that the county judge may by certificate to the collector extend such time of payment whenever the circumstances of the case require.

ART. 7500. *Tax refunded, when.*—Whenever any debts shall be proven against the estate of a decedent after the distribution of property on which the tax has been paid, and a refund is made by the distributee, a due proportion of the tax so paid shall be repaid to him by the executor, administrator or trustee, if still his hands, or by the collector of taxes, if it has been paid to him. The collector shall pay such sums upon the order of the county judge out of any money in his possession under this law; and the comptroller of public accounts shall credit the collector with all sums so paid out by him.

○

IN THE

Supreme Court of the United States

OCTOBER TERM, 1925.

No. 470.

THE UNITED STATES,
Appellant,

vs.

JOHN J. MITCHELL, *et al.*, as Executors of the Last Will and Testament of Dellora R. Gates, deceased,
Appellees.

APPEAL FROM THE UNITED STATES COURT OF CLAIMS.

BRIEF FOR APPELLEES.

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Opinion Below.

The Memorandum Opinion of the Court of Claims is reported in 60 Ct. Clms. 451.

Grounds of Jurisdiction.

The grounds of jurisdiction are as stated at page 1 of the brief for the United States.

History of the Case.

This is an appeal by the United States from a judgment of the United States Court of Claims rendered on March 23, 1925, in favor of the appellees for $905,225.73 and interest thereon, less a certain offset of $381,931.57, with interest thereon (R. 47).

The petition was filed in the Court of Claims on December 6, 1923 (R. 1).

The suit was brought to recover the amount of income taxes for the year 1919 amounting to the said sum of $905,225.73 illegally assessed and collected from the estate of which the appellees are the surviving executors.

In the absence of demurrer, plea or answer to the petition, a statutory general traverse was duly entered under Rule 34 of the Court of Claims (R. 40).

The suit was brought by the appellees, John J. Mitchell and Augustine L. Humes, and by Charles E. Herrmann, as the executors of the estate of Dellora R. Gates (R. 1). On January 8, 1925, upon the argument of the case and the submission thereof on the merits, the death of Charles E. Herrmann, one of the claimants, was suggested and leave was thereupon granted by the Court of Claims to proceed in the names of the surviving claimants, the appellees (R. 40).

The case was heard on an agreed statement of facts (R. 40).

On January 26, 1925, the Court of Claims filed findings of fact and conclusions of law (R. 40).

On March 23, 1925, the Court of Claims entered the judgment from which this appeal is taken (R. 47).

Statement of Facts.

Two claims or causes of action are set forth in the petition. The facts in relation thereto we shall state separately:

Facts Relating to the First Claim or Cause of Action.

The decedent, a resident of Texas, died on November 28, 1918 (R. 41). The will was probated in the County Court of Jefferson County, Texas, on January 6, 1919; letters testamentary were issued on the same day and the Executors qualified and remained Executors down to the time of the filing of the petition (R. 41).

On November 28, 1919, one year after the decedent's death, as required by law, the Executors filed an estate tax return showing an estate tax of $2,927,762.64 payable to the United States (R. 42).

On March 14, 1920, the Executors filed a return of all the income "*received*" by them as executors during the year 1919 (R. 40).

The income tax computed upon the amount of the income so "*received*" as set forth in the return, without any deduction for "estate tax", amounted to $905,225.73 (R. 43).

On March 14, 1920, when the income tax return was filed, the regulations and rulings of the Commissioner of Internal Revenue and the Secretary of the Treasury forbade and refused to allow any deduction of any part of the "*estate tax*" in computing taxable income

(R. 43). At that time neither the decision of the Court of Claims in *Woodward* v. *United States* (56 Ct. Clms. 133) nor the decision of this Court in the same case, *sub. nom. United States* v. *Woodward* (256 U. S. 632) had been rendered (R. 43).

The instructions printed on the income tax return for the year 1919 under the heading: "I. *General Deductions*", (p. 2 of Instructions; R. 39) expressly inhibited deduction of the "estate tax" in the following words:

> "Do not include Federal income taxes, *nor estate or inheritance taxes.*" (Italics ours.)

Accordingly, the Executors made no deduction of the "estate tax" in their income tax return (R. 43), but payment of the income tax for the year 1919, amounting to $905,225.73, was made by the Executors under protest (R. 43).

If the estate tax, amounting to $2,927,762.64, had been allowed by the regulations and rulings as a deduction in computing the income tax payable with respect to income received during the year 1919, neither the Executors nor the estate would have been chargeable with any income tax on income received during that year.

Payment of the income tax for the year 1919 was made by the Executors to avoid the imposition of penalties and interest and distraint or other proceedings for the enforcement and collection of taxes consequent upon the failure or refusal to pay the tax as computed in accordance with the regulations and rulings then in effect (R. 43).

The executors paid the estate tax in the year 1920, $1,000,000 thereof on February 25, 1920, and the balance, $1,927,762.64, on May 27, 1920 (R. 43).

On January 6, 1922, the executors duly filed an application for refund of the income tax so paid by them for the year 1919 (R. 44).

Notwithstanding the decision of this Court in *United States* v. *Woodward, supra,* the application was denied (R. 44).

The Commissioner of Internal Revenue offered to allow the executors to deduct the estate tax in computing the income tax payable by them with respect to the income of the estate received by them during the subsequent year 1920. The executors refused the offer and insisted upon their right to deduct the estate tax from the income received by them during the year 1919 (R. 44, 45).

Facts Relating to the Second Claim or Cause of Action.

During the year 1919 there not only became due and payable by the executors, but the executors in fact paid on May 27, 1919 (R. 45), an inheritance tax imposed by the State of Texas amounting to $357,739.34.

No deduction therefor was made in the executors' income tax return for the year 1919 because the regulations and rulings of the Commissioner of Internal Revenue and the Secretary of the Treasury expressly forbade the making of the deduction (R. 45).

On January 6, 1922, the executors duly filed their application for refund of income tax for the year 1919 on the ground that the inheritance tax both so accruing

and paid to the State of Texas in the year 1919 was deductible in computing the income tax for that year. The application was denied (R. 45, 46).

The Questions Presented.

Two questions are presented as to the deductibility of taxes in computing the net taxable income for the year 1919 under the Revenue Act of 1918.

One of these questions is whether the Federal estate tax which, under the authority of the decision of this Court in *United States* v. *Woodward, supra,* accrued and became due on November 28, 1919, was deductible from income received by the executors during that year, 1919, although it was not paid until the following year, 1920.

The deductibility of the Federal estate tax is admitted in the Government's brief (p. 2). The controversy relates solely to the year in which the deduction should be taken, whether in the year 1919 when the tax accrued and became due and payable, or in the year 1920 when it was paid.

The *Government states* that this question arises "in a case where" the executors' "method of accounting and income tax return was on a receipts and disbursements basis, as distinguished from the accrual basis."

This assumes, *without foundation therefor in the record,* that in this case the executors' method of accounting and income tax return was on a so-called "receipts and disbursements basis". This also assumes without argument that the law prescribed definitely

the two distinct bases of accounting and income tax return to which the Government refers. There is nothing in the record showing that the executors made their return upon a "receipts and disbursements basis". The record shows only that the executors returned the gross income "received" by them and that they were *forbidden* by the regulations and rulings then in effect to deduct the estate tax from income *whenever received*. The executors' return of income for the year 1919 shows, as stated in the Government's brief (p. 6) that the following instruction was printed thereon: "Write 'R' if this return shows income received or 'A' if it shows income accrued." The executors wrote in the space provided for the answer the letter "R". Thus the executors stated only that they were making a return of the gross income "received" by them. This did not amount to a statement either that they kept books or made their return upon any so-called "cash receipts and disbursements basis". It was not then permissible pursuant to the regulations for them to deduct the estate tax from the income of any year. The Government states in its brief (p. 14) that "it must be assumed that the basis used in the return was the basis on which" the executors' "accounts were kept". The return, therefore, satisfied any question of the burden of proof by showing that the executors kept accounts of income received and that they did not deduct the estate tax, the deduction thereof being forbidden. This Court undoubtedly understood the *Woodward* case in the same way, where precisely the same proof appeared in the record.

Nor is there any foundation in the law for the con-

clusion assumed without argument by the Government that the law contemplated or required a "receipts and disbursements basis". As we shall hereinafter contend, the law contemplated that particularly in the case of estates executors should have the right to deduct from income received by them taxes which had become due and payable.

The *second question* relates to the deductibility from gross income "*received*" by the executors in the year 1919 of the inheritance tax which both accrued and was paid to the State of Texas in the year 1919. As stated in the Government's brief (p. 2), there is no controversy regarding the year in which the deduction should be allowed if it is to be allowed. As there stated, the question is whether the Texas inheritance tax is deductible by the executors or by the legatees or distributees in their individual income tax returns.

SUMMARY OF ARGUMENT.

I. The facts in the case of United States v. Woodward, 256 U. S. 632, are identical with those of the instant case, and this case is governed by the decision of this Court in the Woodward case.

II. The re-enactment by the Revenue Act of 1921 of the provisions of the Revenue Act of 1918 with respect to the deductibility of taxes paid or accrued within the taxable year was a legislative approval and adoption of the construction placed upon the Revenue Act of 1918 by this Court in the Woodward case and of the construction subsequently placed thereon by the Treasury Department in accordance with that decision of this Court.

III. The executors had the right to deduct the estate tax for the year 1919 in which it accrued.

(1) The intention of Congress to permit the deduction in the year in which the estate tax accrued is shown by the changes made by the Revenue Act of 1918 in corresponding provisions of the prior Revenue Acts of 1913 and 1916.

(2) The right conferred by Section 214(a) (3) to deduct the estate tax in the year in which it "accrued" is not limited by any other provision of the Act.

(3) The law justified no such sharp line as that insisted upon by the Government between a so-called "cash receipts and disbursements basis" and a so-called "accrual basis".

IV. The Texas Inheritance Tax should be permitted as a deduction.

ARGUMENT

I.

THE FACTS IN THE CASE OF UNITED STATES v. WOODWARD, 256 U. S. 632, ARE IDENTICAL WITH THOSE OF THE INSTANT CASE AND THIS CASE IS GOVERNED BY THE DECISION OF THIS COURT IN THE WOODWARD CASE.

To demonstrate that this case is identical in substance with the *Woodward* case we make the following analysis of the two cases.

(1) *The Revenue Act imposing the income tax was the same in each case.*

The act of February 4, 1919 (Revenue Act of 1918) was in effect for income tax purposes from January 1, 1918, to January 1, 1921. Therefore it was effective for the year 1918 (the year involved in the *Woodward* case [256 U. S. at p. 633]), and for the year 1919 (the year involved in the instant case [R. 42, 43]).

(2) *The Revenue Act imposing the estate tax was the same in each case.*

The act of September 8, 1916 (Revenue Act of 1916) as amended by the act of October 3, 1917 (Revenue Act of 1917) was effective as to the estates of all decedents dying between October 3, 1917 (the date of the passage of the Revenue Act of 1917) and February 4, 1919 (the date of the passage of the Revenue Act of 1918).

The act was therefore effective as to the estate of Mr. Woodward who died on December 17, 1917. (256 U. S. 632 at p. 633.)

The act was also effective as to the estate of Mrs. Gates who died on November 28, 1918 (R. 41).

(3) In the *Woodward* case the estate tax accrued and became payable one year after the decedent's death, namely, on December 17, 1918.

This Court said in that case (256 U. S. 632, at p. 635), referring to the estate tax:

> "*It becomes due not at the time of the decedent's death*, as suggested by counsel for the Government, *but one year thereafter, as the statute plainly provides.*" (Italics ours.)

This Court then held that the estate tax which in that case accordingly accrued on December 17, 1918, was deductible from the income "*received*" by the Woodward executors during the year 1918.

Likewise in the *instant* case, the estate tax accrued one year after the decedent's death, namely, on November 28, 1919 (R. 41), and the estate tax was accordingly deductible from income "*received*" by the Gates executors during the year 1919.

(4) The estate tax in the *Woodward* case was held to accrue in 1918 (one year after the decedent's death) and to be deductible by the Woodward executors from income "*received*" by them in 1918, although not paid until the following year, 1919. Likewise in the *instant* case, the estate tax is deductible by the Gates executors from income "*received*" by them in the year 1919, although not paid until the following year, 1920.

This Court said in the *Woodward* case (256 U. S. 632, at p. 633), referring to the estate tax:

> "The tax became due December 15, 1918, and" the executors "paid it February 8, 1919."

The estate tax in the instant case was paid by the executors in the year 1920. On February 15, 1920, $1,000,000 was paid, and on May 27, 1920, the balance of $1,927,762.64 was paid (R. 42, 43).

(5) *In each case the executors were forbidden to deduct the estate tax.*

The Court of Claims said in the *Woodward* case (56 Ct. Clms. 133, at p. 144) that the "Commissioner of Internal Revenue refused to allow said deduction". At the time the Gates executors made their income tax return for 1919 the regulations and rulings forbade the deduction (R. 42, 43).

(6) *In each case the executors included in their income tax return only income received by them.*

The Government states in its brief (p. 15) that the Woodward executors filed a return of income *"received"*. In that case this Court held that from the income so *"received"* could be deducted the estate tax which accrued and became payable in that year, although not paid until the following year. Therefore the Government must contend that the decision of this Court was wrong, for the Government also states in its brief (p. 18) that the Woodward executors were not entitled to deduct the estate tax which accrued and became payable in the year 1918 unless they not only

returned income "received" but also income "accrued" though not "received".

We do not believe that the Solicitor General in the *Woodward* case or counsel for the Woodward executors or the Court of Claims or this Court thought for a moment that the executors in the *Woodward* case were accruing their income. The petition, the findings of fact, the briefs and the opinion of the Court of Claims abound with statements showing without question that *everyone concerned in the case clearly understood that the Woodward executors reported only income "received"* for the year 1918 and that they sought to deduct the estate tax which accrued and became payable in that year *although it was not paid until the year following.* We believe that the decisions of this Court and of the Court of Claims were rendered with the clearly understood intention of permitting this deduction to be made under the circumstances so clearly appearing.

It appears from the *Transcript of the record* in this Court in the *Woodward* case that it was found as a fact that the Woodward executors reported only the income *"received"* by them. Thus it was there found that the executors "during the year 1918 and prior to the 21st day of December, 1918, *collected*" the income returned (p. 8); that the gross amount of income *"received* by the executors from the said estate for the year 1918 was less than the amount of the said estate tax" (p. 9) and that the executors "during the year 1919 * * * made and filed * * * a return of all the income *received* during the year 1918" (p. 9). (Italics ours.)

The *brief* of the Solicitor General before this Court in the *Woodward* case stated that the executors reported "income *received*" or "*collected*" during the year 1918 (from which the executors sought and were permitted to deduct the estate tax which accrued and became due in that year).

At page 2 the Solicitor General, in his brief in the *Woodward* case, said:

> "In March, 1919, the executors made an income tax return and reported the *income received* by them for the estate prior to December 21, 1918. The will had been probated and the executors qualified on December 21, 1917. They appear, therefore, to have included in this return the *income received* during a period of one year following their qualifications." (Italics ours.)

Again, at page 8 of his brief in the *Woodward* case, the Solicitor General said:

> "It has been stated above that the income *reported* by the executors for the year 1918 was that *collected* up to December 21, 1918, or the expiration of one year from the granting of letters testamentary." (Italics ours.)

In the brief of the attorneys for the Woodward executors (p. 15) reference was made to the income returned by the executors as "*income received*" and as "*income collected*". (Italics ours.)

Of course, both this Court and the Court of Claims clearly understood these facts which were stated in the case over and over again.

Judge Downey in delivering the opinion of the Court of Claims said (56 Ct. Clms. 133, at p. 144):

> "* * * during the year 1918 and prior to the 21st day of December of that year they *collected* income and earnings from the property and assets of the estate * * *. * * * the executors made and filed * * * a return of the *income received* by them during the year 1918 * * * and in said income tax return they claimed as a proper deduction under the provisions of Section 214 of said Revenue Act the amount of said tax which had been paid by them to the Collector of Internal Revenue on the *8th day of February, 1919.* * * * the action is brought for the recovery of the full amount of the income tax paid *for the year 1918.* But the question is as to the right to deduct from the income tax *for that year* the estate tax which *accrued* during the same year irrespective of the relative amounts." (*Italics ours.*)

Mr. Justice Van Devanter in delivering the opinion of this Court said (256 U. S. at page 633):

> "Under that act these executors were required to pay an estate tax of $489,834.07. The tax became due December 15, 1918, and they paid it February 8, 1919. Shortly thereafter the executors made a return, under the Revenue Act of 1918, of the income of the testator's estate for the taxable year 1918 and claimed in that return that in ascertaining the net income for that year the estate tax of $489,834.07 should be deducted."

As in the *Woodward* case, so in the *instant case,* the executors reported the income "*received*" by them dur-

ing the year in question. The Court of Claims found (R. 42) that as required by law the executors "made and filed with the Collector of Internal Revenue at Albany, N. Y., a return of all the income *received* during the year 1919 by said executors in their capacity as executors of the estate of said Dellora R. Gates, deceased." (Italics ours.)

From the above analysis it appears that the *Woodward* case and this case are identical with respect both to the facts and the law applicable thereto.

The facts in the two cases as to tax liability are precisely the same. In each case the executors rendered "a return of all income *received* during the year"; in each case the estate tax accrued, that is, became due and payable during that year; in each case the estate tax was paid in the following year and in each case the income tax was paid for the year after the decedent died without the deduction (which the Commissioner refused to allow) of the estate tax which accrued in that year.

The only distinction between the two cases, which does not amount to a difference, is that the *Woodward* executors claimed the deduction in their income tax return, which at that time in 1918 they were not forbidden to do by any theretofore announced ruling of the Commissioner of Internal Revenue, and the deduction made was thereupon denied by the Commissioner, *whereas* the *Gates* executors paid their tax under protest and did not claim the deduction, it being then, in 1919, expressly forbidden by previous rulings made by the Commissioner, and thereupon filed a claim for

refund after the decision of this Court in the *Woodward case*. If the Gates executors had taken the deduction in their return they would have run the risk of severe penalties, because at that time the regulations expressly forbade any such deduction. The claim for refund made by the Gates executors was based on the *Woodward* case, the facts in the two cases being identical, and was made in exact conformity to the decision in that case. In the *Woodward* case this Court said (256 U. S. 632, at page 635) that the estate tax in that case "not only 'accrued,' which means became due, during the taxable year of 1918, but it was paid before the income for that year was returned or required to be returned" in the year 1919. Therefore the Woodward executors were able to claim the deduction in their income tax return. In the *instant case* payment of $1,000,000 of the estate tax, out of the total of $2,927,762.64, was made on February 25, 1920 (R. 43), but the executors were not in a position to claim the deduction in their income tax return which was filed on March 14, 1920 (R. 42). They were then expressly forbidden by the regulations to make any deduction for estate tax.

This distinction, therefore, is unimportant. In each case the claim for the deduction was denied.

We respectfully submit that the decision in the *Woodward* case governs the instant case.

II.

THE RE-ENACTMENT BY THE REVENUE ACT OF 1921 OF THE PROVISIONS OF THE REVENUE ACT OF 1918 WITH RESPECT TO THE DEDUCTIBILITY OF TAXES PAID OR ACCRUED WITHIN THE TAXABLE YEAR WAS A LEGISLATIVE APPROVAL AND ADOPTION OF THE CONSTRUCTION PLACED UPON THE REVENUE ACT OF 1918 BY THIS COURT IN THE WOODWARD CASE AND OF THE CONSTRUCTION SUBSEQUENTLY PLACED THEREON BY THE TREASURY DEPARTMENT IN ACCORDANCE WITH THAT DECISION OF THIS COURT.

This Court determined in the *Woodward* case that under the Revenue Act of 1918 the estate tax was deductible as a tax "paid or accrued within the taxable year" and that executors may deduct the estate tax in computing income of the estate for the year in which the estate tax accrued and became due and payable, although not paid until the following year. The decision of this Court was not qualified in its application in terms or by implication.

The rule declared by this Court in the *Woodward* case was recognized by the Treasury Department in publishing the decision in Treasury Decision 3195 (*Cum. Bul.* 4, p. 153), promulgated under date of July 13, 1921, as follows:

> "INCOME TAX—REVENUE ACT OF 1918—DECISION OF SUPREME COURT.
>
> "*Deductions—Federal Estate Tax Paid by Executor.*
>
> "Federal estate tax paid by executors of an estate is an allowable deduction, under section

214, in ascertaining the net taxable income of the estate, for the year in which said estate tax 'accrued', which means became due."

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C.

"To collectors of internal revenue
and others concerned:

"The appended decision of the Supreme Court of the United States, dated June 6, 1921, in the case of *United States* v. *Alan H. Woodward, et al., executors of Joseph H. Woodward, deceased,* affirming the judgment of the Court of Claims, is published for the information of internal revenue officers and others concerned.

D. H. Blair,
Commissioner of Internal Revenue.

Approved, July 13, 1921:
A. W. Mellon,
Secretary of the Treasury."

The Commissioner of Internal Revenue, in his Annual Report to the Secretary of the Treasury for the fiscal year ended June 30, 1921, reporting on the important cases decided during that year, said, at page 195 of his report:

"Federal estate tax paid by executors of an estate is an allowable deduction, under Section 214 of the Revenue Act of 1918, in ascertaining the net taxable income of the estate for the *year in which said estate tax 'accrued', which means became due.*" (Italics ours.)

In so promulgating the rule announced by the decision in the *Woodward* case, the Treasury Department and the Commissioner of Internal Revenue stated the rule without qualification as to its applicability. As so stated the rule was not limited by any provision or intimation that the deduction of the estate tax in the year in which it accrued and became due and payable could not be made unless, as now contended, some particular method of bookkeeping was employed by the executors.

The decision in the *Woodward* case having been rendered, and the rule announced therein having been so promulgated, Congress *thereafter* enacted the later *Revenue Act of 1921,* approved November 23, 1921. In so doing Congress re-enacted section 214 (a) (3) providing for the deductibility of "taxes paid or accrued within the taxable year" in practically identical terms with those used in the Revenue Act of 1918. Congress also re-enacted in identical terms the provisions of Sections 212 and 200 of the Revenue Act of 1918 upon which the Government relies in its brief herein (pp. 4, 5).

In debating the bill which became the *Revenue Act* of 1921 on the floor of the Senate the *Woodward* case which had been decided in June of that year was repeatedly referred to and the entire opinion of this Court was printed in connection with Senator Underwood's remarks (*Congressional Record, Vol.* 61, *Part* 6, *page* 5949).

Congress also included in the Revenue Act of 1921 the following further provision [Section 214 (a) (3)] showing that the *Woodward* case was in mind:

> "For the purpose of this paragraph, estate, inheritance, legacy, and succession taxes *accrue on the due date* thereof except as otherwise provided by the law of the jurisdiction imposing such taxes." (Italics ours.)

These words were added by an amendment proposed as follows on the floor of the Senate on October 25, 1921 by Senator Smoot, on behalf of the Committee on Finance:

> "In the past each case has come up to the Internal Revenue Bureau for decision, and now that bureau thinks Congress should specifically state just what course that bureau shall follow." (*Congressional Record, Vol.* 61, *Part* 7, *page* 6726.)

It thus appears that permitting the deduction of such taxes when accrued without qualification as determined in the *Woodward* case was satisfactory to the Bureau, or at least that the Bureau recognized the right to the deduction when accrued as given by the law. As pointed out later in this brief, it is not only highly unusual but improper for executors to report income not actually received.

If Congress had thought that there was any doubt about the desirability of the law as construed by this Court in the *Woodward* case, or had believed that there was any public policy which should lead to a change in the law as so construed, without qualification, Congress could readily have altered the law when it enacted the Revenue Act of 1921. So far from altering the law, the law was re-enacted and the above quoted provision was added that the date of accrual should be the "due

date", thus expressly sanctioning the decision in the *Woodward* case.

It is established by the decisions of this Court that the re-enactment by Congress of a statute which has previously received a certain construction, whether judicial or departmental, is an approval and adoption by Congress of such construction.

> *Provost et al.* v. *United States,* 46 Sup. Ct. Rep. 152, at p. 155 (decided January 4, 1926);
> *United States* v. *Anderson,* 46 Sup. Ct. Rep. 131, at p. 133;
> *Hecht* v. *Malley,* 265 U. S. 144, at p. 153;
> *United States* v. *G. Falk & Bro.,* 204 U. S. 143;
> *National Lead Co.* v. *United States,* 252 U. S. 140;
> *Komada* v. *United States,* 215 U. S. 392;
> *United States* v. *Hermanos y Compania,* 209 U. S. 337;
> *New York, N. H. & H. R. R. Co.* v. *Interstate Commerce Commission,* 200 U. S. 361;
> *Copper Queen Mining Co.* v. *Arizona Board,* 206 U. S. 474;
> *Latimer* v. *United States,* 223 U. S. 501.

The Government insists that the estate tax was not deductible in the year in which it accrued and became due and payable, unless the executors rendered a return not only of income *actually received* by them but also of some kind of "accruals" of income not received by them. If the decision in the *Woodward* case and the

subsequent regulation of the Treasury Department be so limited, it follows that by re-enacting the provisions referred to of the Revenue Act of 1918, Congress only adopted and approved the decision of this Court permitting the deduction of the estate tax in the year in which it accrued, subject to the qualification that executors should render a return not only of income received by them but also of income which had accrued but which had not been received.

There are at least two answers to this.

In the *first* place the result would be to qualify the extent of the adoption and approval by Congress of the decision of this Court, although no such qualification was expressed in the decision of this Court.

In the *second* place, if the rule adopted by Congress giving the right to deduct the estate tax in the year in which it accrued and became due is restricted to a case where executors include in their return income accrued although not received, this part of the decision of this Court in the *Woodward* case, and the subsequent legislative adoption of such construction by Congress, become practically nugatory.

The Revenue Act of 1918 and the adoption and approval of the decision in the *Woodward* case should be read in the light of the common law (*United States* v. *Sanges*, 144 U. S. 310, 311; *Thompson* v. *Thompson*, 218 U. S. 611, 618, 619).

An executor is a fiduciary whose term of office is limited in time. His duty is to collect and liquidate the assets of the estate, pay debts and distribute the balance. Obviously an executor should not enter up as his income or include in his accounts, items which have

not come into his hands; nor is it his duty to charge himself with such items.

Indeed, in a case in which the financial interests of the beneficiaries would be affected, we do not believe any court would permit him to include in his books or in his accounts to the court income not actually received by him.

In most jurisdictions executors are entitled to commissions upon the income of the estate during the administration. It would be improper to allow an executor commissions on the basis of accounts that include income which had accrued but which he had not received and which might not be received at all or might be received by a successor who would be entitled to commissions.

Nor do we believe that it is permissible for an executor in rendering his return for income tax to include therein income accrued but not received by him with the result of charging the estate in his hands with an obligation for the payment of taxes with respect to income which might never be received or which might be received in some subsequent year by beneficiaries or by the testamentary trustee and perchance at a time when the rate of tax or the method of computation thereof might be utterly different.

If any method were adopted by an executor other than that of charging himself only with the income actually received by him, and of reporting such income for the purpose of income taxation, it would be anomalous and inconsistent with the method habitually and commonly pursued by executors in keeping their ac-

counts, in accounting to the court and in making their tax returns.

The contention that executors should include in their books and accounts income accrued in order to fall within the decision in the *Woodward* case amounts to a request that this Court sanction such an unusual and abnormal method of keeping executors' books; or sanction a method of keeping books different from that by which they must account to the court appointing them or to sanction the keeping of one set of books for income tax purposes and another set for accounting to the court and dealing with the legatees and distributees. Certainly this Court had no such thought in the *Woodward* case.

If the Government's argument be sound, then Congress by enacting the Revenue Act of 1921 approved the decision of this Court in the *Woodward* case permitting the deduction of the estate tax in the year in which it accrued and became due (although not paid until the following year) *only if that decision of this Court be restricted to cases in which executors have the fortitude to charge themselves with income which they have not received and which they may never receive.* The approval by Congress of the decision of this Court in the *Woodward* case and of the regulations promulgated pursuant thereto should not be limited by any such narrow or forced construction. *Likewise* neither should the Revenue Act nor the decision of this Court in the *Woodward* case be so restricted. This Court has repeatedly held that a statute will be construed, in its application to a particular case, so as not to lead to

injustice or absurd consequences. (*United States* v. *Kirby*, 7 Wallace 482; *Holy Trinity Church* v. *United States*, 143 U. S. 457.)

In contending that the unqualified decision in the *Woodward* case should be qualified in its application, the Government makes substantially the argument (*a*) that in the briefs in the *Woodward* case, no mention was made of section 212 (b) of the Revenue Act of 1918 which prescribed that the income should be computed in accordance with the method of accounting regularly employed in keeping the books of the taxpayer (p. 16); (*b*) that in the *Woodward* case "proper attention was not given to the question of the year in which the deduction should be taken" (p. 17); (*c*) that, in substance, the right to deduct the estate tax in the year in which it accrued and became due and payable depended upon the method in which the executors kept their accounts (p. 17); (*d*) that if the executors in the *Woodward* case kept their accounts and made their returns on a so-called "receipts and disbursements basis" they were not entitled to the deduction of the Federal estate tax in the year 1918 (p. 18) and, therefore, (*e*) that the decision in the *Woodward* case was erroneous as the executors in that case (as the Government itself states at page 15) "filed a return of income 'received'."

Thus the Government contends *that if certain arguments had been made before this Court in the Woodward* case which the Government states were not made, this Court would not in that case have rendered the decision that it did render. For the decision of this Court in that case was flatly to the effect that execu-

tors in computing their income tax upon income received by them during a calendar year might deduct the estate tax which accrued and became due and payable in that year although it was not paid until the following year.

A similar contention was made and overruled by this Court in the analogous case of *Latimer* v. *United States*, 223 U. S. 501. There the plaintiff imported into Porto Rico tobacco consisting of sweepings from floors. He contended that the sweepings were "*waste*" and as such dutiable at ten per cent. *ad valorem* under the Tariff Act of 1897. The customs officer classed the sweepings as "*unmanufactured tobacco*" dutiable under the Act at 55 cents per pound. The importer appealed to the General Board who sustained the Collector. The decision of the General Board was affirmed by the District Court of Porto Rico. A direct appeal was then taken to this Court.

It appeared that under the previous tariff act which contained the same language as that in the Tariff Act of 1897, this Court had held that such sweepings were "*unmanufactured tobacco*".

In arguing the case before this Court the importer made the similar contention that is now made here by the Government. He insisted that in the argument of the earlier case before the Supreme Court the contention had not been made that the tobacco was "*waste*", and that if that contention had been made the conclusion of the Court might have been that it was "*waste*".

This Court, however, affirmed the decision of the lower court and held that the previous case had decided that the words in the statute "*unmanufactured tobacco*"

included tobacco of the sort involved and that by re-enacting the same words in the later act Congress had adopted the construction already given to them by the previous decision of this Court. At page 504 this Court (Mr. *Justice Lamar*) said:

> "The plaintiff claims that this decision has no application here, because it related to clippings which were of a higher grade than scrap, and for the further reason that, *as the importer there made no claim that it should be taxed as waste, the Court did not pass on that question.* But it did definitely decide that such material, by whatever name called, was 'unmanufactured tobacco'. The words, having received such a construction under the act of 1883, must be given the same meaning when used in the Tariff Act of 1897, on the theory that, in using the phrase in the later statute, *Congress adopted the construction already given it by this Court.*" (Italics ours.)

Likewise here, the Government now insists that it made no such contention in the *Woodward* case as it now makes and that the right to deduct the estate tax in the manner permitted in the *Woodward* case should in some way be limited or restricted. But this Court did definitely decide that the estate tax was deductible under the identical circumstances presented by the instant case and expressed no such qualification of the rule announced as that now insisted upon by the Government. Therefore, the Revenue Act of 1918 having been re-enacted by the Revenue Act of 1921 after the construction placed upon the earlier act by the decision of this Court in the *Woodward* case, it follows that

Congress adopted and approved the construction given to the Revenue Act of 1918 by this Court.

In fact the Government's brief in the *Woodward* case did raise the point that the tax should not be deducted from the income for 1918, and this contention was the last main point of the Government's brief. It is true that the Government made this contention in the form that the tax neither accrued nor was paid in the year 1918; but the careful consideration given to this point necessarily involved consideration of whether this accrued tax could be deducted in the year 1918 although paid in the subsequent year.

The contention of the Solicitor General in the *Woodward* case was answered by the unqualified decision of this Court in referring to the estate tax as follows at page 635:

> "*It becomes due not at the time of the decedent's death, as suggested by counsel for the Government, but one year thereafter, as the statute plainly provides.* * * *
>
> "Here the estate tax not only '*accrued,*' which means became due, during the taxable year of 1918, but it was paid before the income for that year was returned or required to be returned. When the return was made the executors claimed a deduction by reason of that tax. We hold that under the terms of the Act of 1918 the deduction should have been allowed." (Italics ours.)

III.

THE EXECUTORS HAD THE RIGHT TO DEDUCT THE ESTATE TAX FOR THE YEAR 1919 IN WHICH IT ACCRUED.

Although the *Woodward* case determined that the estate tax was deductible in the year in which it accrued the Government now contends that that was not permissible unless executors charge themselves with "accrued" income not received by them.

The following extracts from the *Revenue Act* of 1918 are the material portions here involved:

Section 214(a) (3):

> "(a) That in computing net income there shall be allowed as deductions: * * *
>
> "(3) Taxes paid or accrued within the taxable year imposed (a) by the authority of the United States, except income, war profits, and excess-profits taxes; * * * (c) by the authority of any State or Territory, or any county, school district, municipality, or other taxing subdivision of any State or Territory, not including those assessed against local benefits of a kind tending to increase the value of the property assessed * * *."

Section 200:

> "* * * The term 'paid,' for the purposes of the deductions and credits under this title, means 'paid or accrued' or 'paid or incurred,' and the terms 'paid or incurred' and 'paid or ac-

crued' shall be construed according to the method of accounting upon the basis of which the net income is computed under section 212."

Section 212:

"(b) The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as in the opinion of the Commissioner does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 200 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year. * * *"

(1) The intention of Congress to permit the deduction in the year in which the estate tax accrued is shown by the changes made by the Revenue Act of 1918 in corresponding provisions of the prior Revenue Acts of 1913 and 1916.

The *Revenue Acts* of 1913 and 1916 provided that, in computing net income, deductions should be allowed (italics ours) of "taxes *paid*"; of "the necessary expenses actually *paid* in carrying on any business" and "of interest *paid* within the year" (*Revenue Act* 1913, *Section* A; *Revenue Act* 1916, *Section* 5).

The *Revenue Act* of 1918 made an important alteration. *Section* 214 of that Act provided for the deduction (italics ours) of "taxes paid or *accrued*", of business expenses "paid or *incurred,*" and of interest "paid or *accrued*" within the taxable year.

While a so-called "accrual" basis of reporting income was permitted by *Section* 13 (d) of the *Revenue Act* of 1916 under certain circumstances (*United States* v. *Anderson,* 46 Sup. Ct. Rep. 131), that fact does not eliminate the significance of the addition by the *Revenue Act* of 1918 of the word "*accrued*" in referring to deductions. Although in the *Revenue Act* of 1918 Congress added the word "accrued" in referring to the deductions, the word "accrued" was not added on the other side of the account in *Section* 213 defining gross income nor in the provisions of *Section* 219 defining the income of an estate or trust.

The argument of the Government that the right to deduct the estate tax in the year in which it accrued is so limited by *Sections* 200 and 212 that thereunder a strict so-called "accrual" basis was provided, we shall answer under the following subdivisions of this Point.

(2) The right conferred by Section 214(a) (3) to deduct the estate tax in the year in which it "accrued" is not limited by Sections 200 and 212. The result of such a construction would be to render superfluous the definition given in Section 200 of the word "paid" for the purposes of the deductions therein referred to.

The pertinent provisions of *Section* 200 are as follows:

> "* * * The term 'paid,' for the purposes of the deductions and credits under this title,

> means 'paid or accrued' or 'paid or incurred,' and the terms 'paid or incurred' and 'paid or accrued' shall be construed according to the method of accounting upon the basis of which the net income is computed under section 212."

The Government contends that the allowance by *Section* 214(a) (3) of the right to deduct taxes "accrued within the taxable year" is limited by the provisions of *Section* 200 providing that the terms "*paid or accrued*" shall be "construed according to the method of accounting upon the basis of which the net income is computed under *Section* 212", and that thereunder the executors were prohibited from deducting the estate tax accrued from income received by them.

If it had been the object of Congress that *Section* 200 should, in any way limit the right to deduct the estate tax in the year in which it "accrues" (as permitted by *Section* 214), in no event was it necessary to include in *Section* 200 the words:

> "The term 'paid,' for the purposes of the deductions and credits under this title, means 'paid or accrued' or 'paid or incurred.'"

If the portion of *Section* 200 in question had consisted only of the words

> "the terms 'paid or incurred' and 'paid or accrued' shall be construed according to the method of accounting upon the basis of which the net income is computed under Section 212"

and the earlier portion above quoted referring to the definition therein of the word "paid" had been elim-

inated, then the right granted by *Section* 214(a) (3) to deduct taxes either "*paid* or *accrued* within the taxable year" would have been limited (by the remaining requirement that the words "paid or accrued" shall be construed "according to the method of accounting upon the basis of which the net income is computed under *Section* 212") to the same extent as the Government claims the right was limited by the actual form of the provision without omitting the earlier portion thereof.

If *Section* 200, *standing as it is,* be so construed, then the inclusion of the first portion of *Section* 200, wherein the word "*paid*" is defined, is rendered superfluous and unnecessary, for the term "*paid*" *is not used by itself* in *Title* II (the title referred to) *for the purposes of any deduction thereunder.* Whenever the word "paid" is used in any section of the Act relating to allowable deductions, it is used together with the word "accrued", in the form "paid or accrued", and, accordingly, if the contention of the Government be correct the latter portion of *Section* 200 would afford a sufficient definition both of "*paid*" and "accrued" and the earlier portion of *Section* 200 is superfluous.

Of course it is a settled rule of statutory construction, to which this Court has frequently referred, that a statute shall not be construed so as to render superfluous any portion thereof.

In *Market Company* v. *Hoffman,* 11 Otto (101 U. S.) 112, at pages 115, 116, this Court said:

> "We are not at liberty to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that significance and effect shall, if possible, be

> accorded to every word. As early as in Bacon's Abridgment, sect. 2, it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.' This rule has been repeated innumerable times. Another rule equally recognized is that every part of a statute must be construed in connection with the whole, so as to make all the parts harmonize, if possible, and give meaning to each."

Again, in *Platt* v. *Union Pacific Railroad Co.,* 9 Otto (99 U. S.) 48, at pages 58, 59, this Court said:

> "Congress is not to be presumed to have used words for no purpose. * * * the admitted rules of statutory construction declare that a legislature is presumed to have used no superfluous words. Courts are to accord a meaning, if possible, to every word in a statute. In *Commonwealth* v. *Alger* (7 Cush. (Mass.) 53-89), it was said that in putting a construction upon any statute every part must be regarded, and it must be so expounded, if practicable, as to give some effect to every part of it."
>
> *United States* v. *Stowell,* 133 U. S. 1, at *page* 13.

We submit that *Section* 200 should be given another construction, which will give effect and afford a reasonable meaning to its provisions and not render unnecessary any of its provisions. The first portion of *Section* 200, providing that the term *"paid"* means *"paid or accrued"* or *"paid or incurred",* is not rendered superfluous or unnecessary if the *entire section* be construed as *being solely* a definition of the word *"paid"* (namely, as "paid or accrued" or "paid or

incurred") and if the subsequent provision of the section be construed as limiting the words "paid or accrued" or "paid or incurred" *only when those words are used* in *Section* 200 (in so defining the word "paid") and *not when used* in *Section* 214(a) (3) in providing for the deduction of taxes "paid or accrued".

In this connection we refer to the significant change made by the *Revenue Act* of 1924. Congress eliminated from *Section* 200, subdivision (d), of that Act the words:

> "The term 'paid' for the purposes of the deductions and credits under this title, means 'paid or accrued' or 'paid or incurred' ",

confining the section to a definition of the terms "paid or accrued" and "paid or incurred" when used together.

We submit that the object of this change made by the *Revenue Act* of 1924 was to render the right to deduct taxes accrued dependent upon the provisions of *Section* 212 and that it was not dependent thereon under the prior acts of 1918 and 1921.

This Court said in the case of *Provost* v. *United States*, 46 Sup. Ct. Rep. 152, 155, in dealing with an analogous situation:

> "* * * and when Congress adopted in the amended law of 1921 *the very suggestion made and rejected two years before, it then intended to effect a change in the law as it had previously existed* (*Smietanka* v. *First Trust & Savings Bank*, 257 U. S. 602, 42 S. Ct. 223, 66 L. Ed. 391." (Italics ours.)

That the right to deduct the estate tax in the year in which accrued was not limited by the provisions of Sections 200 and 212 is shown by the history of the Revenue Act of 1918 during its passage through Congress.

As first passed by the House of Representatives the bill (H. R. 12863, 65*th Congress,* 2d *Session; see Senate Report No.* 617) permitted the deduction from income received (*Sec.* 213) of taxes either *"paid"* or *"accrued"* in substantially the form in which the law was finally passed. In its original form the bill did not contain in *Section* 200 any of the definitions of the word *"paid"* or of the phrase *"paid or accrued"* or of the phrase *"paid or incurred"* finally set forth in *Section* 200 and left the right to deduct taxes either "paid" or "accrued" without any qualification.

The Senate disagreed and attempted to insert in *Section* 200 of the bill the following provision, which was utterly different in effect from *Section* 200 as it was finally passed and which was the same as the corresponding provision in the Revenue Act of 1924 reading: "The terms 'paid or incurred' and 'paid or accrued' shall be construed according to the method of accounting upon the basis of which the net income is computed under *Section* 212" (Cong. Rec., Vol. 57, p. 293). In the Senate's attempted revision of the bill the word *"paid"* was not defined, but it was provided that the words *"paid or accrued"* should be construed according to the method of accounting upon the basis whereof the net income is computed. The result of reading the Senate's suggested limitation

into *Section* 214(a) (3) indicates the difference between the Senate revision and the law as it was finally passed. The Senate revision might have been construed as making *Section* 214(a) (3) provide that in computing net income there should be allowed as deductions "taxes paid or accrued according to the method of accounting upon the basis of which the net income is computed under Section 212."

If the bill had been passed in this form, the contention of the Government that *Section* 214(a) (3) was limited by *Section* 200 might have been sustained.

However, the proposed Senate revision was *rejected* by the House (*Congressional Record, Vol.* 57, *pp.* 944, 945). Having been so rejected the question was considered by the Conference Committee of the two Houses. The Conference Committee did not accept the Senate Revision, but modified the provision into the form in which it was finally enacted into law, by adding the words:

> "The term 'paid,' for the purposes of the deductions and credits under this title, means 'paid or accrued' or 'paid or incurred' * * *."

Thereby the original intention of the House of Representatives was restored.

This change made by the Conference Committee is well set forth in the statement regarding the results reached by the Conference Committee made by the Managers on the part of the House (*Congressional Record, Vol.* 57, *p.* 2986):

> "Amendment No. 13: This amendment provides that the terms 'paid or incurred' and 'paid

> or accrued' when used in the income tax title shall be construed according to the method of accounting upon the basis of which the net income is computed under Section 212; *and the House recedes with an amendment defining the word 'paid' when used for the purpose of computing the deductions and credits.*" (Italics ours.)

The result was that, in the bill as finally enacted, *Section* 214(a) (3) provided for the deduction of taxes "accrued" from income received without any limitation imposed by the definitions set forth in *Section* 200 and *Section* 212.

In this connection we refer to the rule declared in *Gould* v. *Gould*, 245 U. S. 151 (Mr. *Justice McReynolds*) at page 153 as follows:

> "In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the Government, and in favor of the citizen. *United States* v. *Wigglesworth*, 2 Story 369; *American Net & Twine Co.* v. *Worthington*, 141 U. S. 468, 474; *Benzinger* v. *United States*, 192 U. S. 38, 55."

The following provision was also included in Section 213(a) of the Revenue Act of 1918, referring to items of gross income (not to deduction):

> "The amount of all such items shall be included in the gross income for the taxable year

> in which *received* by the taxpayer, unless, under methods of accounting permitted under subdivision (b) of Section 212 any such amounts are to be properly accounted for as of a different period; * * *."

We submit that this provision requiring as the primary method of reporting *receipts* as the *gross income* of the taxpayer contemplated that there might be deducted therefrom not only taxes *"paid,"* but also (as for the first time permitted by the words of the Revenue Act of 1918) taxes *"accrued"*. The fact that some other method of reporting income might under some circumstances be allowed does not alter the force of the primary method established or the right to the deductions allowed.

The *estate of a decedent* furnishes a striking illustration of the applicability of our contention that Congress intended to permit the deduction of the estate tax in the year in which it accrued from gross income received. Frequently and perhaps usually estates are in process of administration for not more than one full year, as in the *Woodward* case. Distribution of the estate is required as soon as possible. From the first and usually the only one full year the estate tax, the largest single deduction, should be allowed. Although the estate tax becomes due at the end of one year from the date of decedent's death, frequently it cannot be paid until thereafter without sacrifice of assets.

In the instant case the estate tax amounted to nearly three million dollars. The income tax for 1919 without deduction for estate tax amounted to about nine hundred thousand dollars. An excellent illustra-

tion is thus afforded of the fact that the year following the decedent's death is the year involving the greatest complexities of administration and is the year in which the greatest burdens are imposed upon the estate and upon the executors in procuring funds to make such large payments.

We submit, therefore, that Congress intended by the addition of the word "accrued" in the Revenue Act of 1918 to permit executors to lighten these burdens by deducting from the first and usually the only full year of administration the amount of the estate tax during the year in which it became due. *Certainly the deduction should not be disallowed merely because the executors did not choose to run the risk of charging themselves with and paying income tax upon income not received by them.*

The *Revenue Act* of 1918 should be construed to contemplate a reasonable result in its application to the instant case. If the contention of the Government be sustained, an executor was not permitted to deduct the estate tax in the year in which it accrued if not paid in that year unless the executor was willing to run the risk of personal liability by charging himself with income not received.

As executors should not and would not normally be willing to assume such a risk, the practical consequence would be to deny to estates the option afforded by *Section* 214 to deduct the estate tax from the income in the year in which it accrued, unless paid in that year. Thus beneficiaries represented by fiduciaries, such as executors, would be the only persons who would not be able to

avail themselves of the option. But it was held in the *Woodward* case that the estate tax could be deducted from income "received" by the executors in the year in which the estate tax accrued, although not paid in that year, and in the subsequent regulation of the Treasury Department promulgated pursuant to the *Woodward* case the same right of executors was declared to exist.

The conclusion is that a reasonable construction of the law does not restrict the executors from deducting the estate tax in the year in which it accrued, though not paid in that year, to cases in which the executors are willing to charge themselves with income which they have not received.

The Government's argument if sustained would throw the *greatest burden upon the very estates which had already suffered* from the earlier erroneous ruling of the Commissioner to the effect that the estate tax was not deductible in any year.

Those estates, including the Gates estate, were compelled to pay their taxes without the benefit of any deduction whatever until after the question had been decided by this Court. Now, after the decision in the *Woodward* case and after Congress has expressly approved the holding therein by enacting the Revenue Act of 1921, the Government is endeavoring to deprive these taxpayers of the full benefit of the deduction by compelling them to take it in a later year.

Future taxpayers can divide, in fact are dividing, their estate tax payments over a series of years. Thus they are taking advantage of the position now insisted upon by the Commissioner, which the Government in-

sists upon in the instant case. A like method of dividing the payments can be pursued under the provisions of the Revenue Act of 1924. The present ruling of the Commissioner harms only those taxpayers already injured by reliance upon his previous erroneous ruling under which they were denied the benefit of a deduction in any year.

(3) The law justified no such sharp line as that insisted upon by the Government between a so-called "cash receipts and disbursements basis" and a so-called "accrual basis".

The Government asserts in its brief (pp. 9, 12) that the executors' return should have been rendered either upon a so-called "cash receipts and disbursements basis" or upon a so-called "accrual basis". This contention is based only upon an assumption, made without argument, that the right given by *Section* 214 to deduct the estate tax in the year in which it accrued was restricted by *Sections* 200 and 212 and that *Sections* 200 and 212 drew a sharp line of distinction between the two bases of accounting to which the Government refers.

We have contended, *supra,* that *Sections* 200 and 212 do not so limit *Section* 214. Admitting, only for argument, that the right to deduct the estate tax in the year in which it accrued should be read in connection with *Sections* 200 and 212, we contend that those sections do not make the right of the executors to the deduction dependent (as the Government contends) upon their charging themselves with income not received by them.

The *ultimate requirement* of *Sections* 200 and 21 is that the taxpayer shall render his return so as t "clearly reflect income". Thus, *Article* 22 of *Regula tions* 45 under the *Revenue Act* of 1918 provided:

> "The time as of which any item of gross in come or any deduction is to be accounted fo must be determined in the light of the funda mental rule that the computation shall be mad in such a manner as clearly reflects the tax payer's income."

Those sections required that if the taxpayer kept book which did not clearly reflect income, he must neverthe less make his return so that income would be clearl reflected. If he kept no books the requirement was th same. The criterion in any case was whether incom was clearly reflected by the return.

The Government states in its brief (p. 11) that i the taxpayer's books do not clearly reflect income or i he keeps no books, the basis for the return and the com putation of the tax was one to be designated by th Commissioner. In the instant case the executors mad their return of income at a time when the regulation and rulings of the Commissioner *forbade any deductio for the estate tax in any year* and therefore the execu tors rendered a return, under protest, of the gross in come actually received by them without making an deduction for the estate tax which had accrued an become payable. The Commissioner was certainly no given authority to contravene by his rulings the ex press terms of the law or the intent thereof as inter preted by this Court. If, as we contend and as was hel

in the *Woodward* case, the law intended to provide that from income received by an executor the estate tax might be deducted in the year in which it accrued though not paid until the following year, the Commissioner had no authority to determine otherwise.

That no such sharp line of distinction between a so-called "cash receipts and disbursements basis" and a so-called "accrual basis" (to which the Government refers) was intended by the Act appears from the statute itself and from rulings of the Commissioner.

For instance, it is provided in *Section* 219 that from "*income received* by estates of deceased persons" executors may deduct

> "any part of the gross income which, pursuant to the terms of the will or deed creating the trust, is during the taxable year *paid to or permanently set aside* for the United States, any state, territory, or any political subdivision thereof, or the District of Columbia, or any corporation organized and operated exclusively for religious, charitable, scientific, or educational purposes, * * *" (Sec. 219 [b]. [Italics ours.]

This provides for the deduction of an accrued item from income "*received*". Nothing is gained by calling the deduction a "*constructive payment*". Deductions, therefore, are not restricted to disbursements actually made.

Again, *Section* 219 (b) in making further provision concerning estates and trusts, and still referring primarily to "income received", provides:

> "in cases under paragraph (4) of subdivision (a) of this Section the fiduciary shall include in the return a statement of each beneficiary's distributive share of such net income, *whether or not* distributed before the close of the taxable year for which the return is made." [Italics ours.]

Thus, again the law permits the deduction from income "received" of an accrued deduction, whether or not distributed.

Again, *Section* 219, still referring to "income received", provides further in subdivision (c) that

> "in determining the net income of the estate of any deceased person during the period of administration or settlement there may be deducted the amount of any income properly *paid or credited* to any legatee, heir or other beneficiary. * * *" [Italics ours.]

This provision furnishes an additional illustration of an accrued deduction from income "received", whether payment is made or not.

By parity of reasoning, it is provided in *subdivision* (d) of *Section* 219, still referring to "income received", that

> "there shall be included in computing the net income of each beneficiary his distribution share, *whether distributed or not,* of the net income of the estate or trust for the taxable year, * * *". [Italics ours.]

Thus, in a return of income "received", a beneficiary entitled to a distribution must pay an income tax thereon, although he has not received the distribution.

Among other regulations, the Commissioner issued the following regulation under the Revenue Act of 1918:

> "The regulations governing partnerships are generally applicable to such an estate or trust * * *" (Article 345, Regulations 45).
>
> "The distributive share of the profits of a partner in a partnership or of a stockholder in a personal service corporation is regarded as *received by him although not distributed* * * *" (Article 54, Regulations 45).

Terming such an accrual a "constructive receipt" is a mere fiction. Certain items of accrual should be included with receipts in order to clearly reflect income.

Another striking example of an "accrual" which is treated as a "receipt" is found in the following regulation (Article 54, Regulations 45):

> "*Examples of Constructive Receipt.*—Where interest coupons have matured, but have not been cashed, such interest payment, *though not collected when due and payable,* is nevertheless available to the taxpayer and should therefore be included in his gross income for the year during which the coupons matured. * * *" [Italics ours.]

The reason for this regulation is that such coupons are a part of the true income of a taxpayer who renders a return of the income received.

Again in another way *Section* 219 of the Act shows that it was not the intention of Congress that executors, in keeping their books or in rendering their returns,

should charge themselves with any income not received by them, except perhaps in such a case as that of an overdue coupon which it was the duty of the executors to collect. That section provides that the income tax shall be imposed upon:

> "Income *received* by estates of deceased persons *during the period of administration or settlement*". (Italics ours.)

Congress did not intend that executors should be taxable upon income not received by them during, but received by someone else after the end of, "the period of administration or settlement". It could not have been the intention to require that executors should charge themselves with income received by someone else after the close of the administration as a condition of their right to deduct the estate tax in the year in which it accrued.

The Government argues that because the taxpayer did not *accrue income,* it should not be permitted to *accrue taxes.*

This contention illustrates the *widely varying senses* in which the word *"accrue"* is used. When the Government speaks of accruals of income in this case it refers to such an item as interest accrued December 31st on a semi-annual coupon due in the following year, namely, income which has not become due and payable and which may never be received. The analogous case, on the other side of the account, is the accrual of part of an annual real estate tax which becomes due in the following year. Accruals of taxes in this sense are fre-

quently set up on their books by commercial corporations and are allowed by the Bureau.

The Federal estate tax, after it accrues and becomes due and payable, *is utterly different in nature.* It "accrues" in an entirely different sense of the word, namely, of "having come or fallen in". Analogous to the estate tax, on the other side of the account, is an interest coupon which has become due but which remains uncollected through neglect or design but which the Bureau requires to be included in returns on whatever basis made (*Article* 54, *Regulations* 45).

To distinguish between such an item as an overdue coupon and a past due tax unpaid by calling one a *"constructive receipt"* and the other an *"accrual"*, and then to argue that the "constructive receipt" has a proper place in a return on an actual cash basis while the unpaid estate tax has not, cannot disguise the fundamental difference.

The case of *United States* v. *Anderson,* 46 Sup. Ct. Rep. 131, arose under the *Revenue Act* of 1916 as amended by the *Revenue Act* of 1917, before the numerous significant changes made by the *Revenue Act* of 1918 under which the *Woodward* case and the instant case have arisen. It involved the case of a corporate taxpayer which had elected to make a return reflecting its books of account and reporting as gross income all items accrued on its books and had claimed as deductions all reserves on its books except the reserve for taxes which did not differ essentially from the others. This Court held that a taxpayer electing to make a return in accordance with its books under the Act of

1916 must abide thereby in a case in which income was properly reflected by the books. Although this Court said that the question considered in that case *"was not raised, considered or decided" in the Woodward case* (p. 134), yet the case is particularly interesting here because of its reference to the difficulty encountered under the acts of 1909 and 1913 under which only interest, taxes and the like actually *paid out* were recognized as deductions. In that case this Court also referred to the fact that it was pressed upon the Court in argument that even under the strict terms of the Acts of 1909 and 1913 it was necessary at least to some extent to establish by administrative practice the use of inventories and "the deduction of expenses constituting a liability of the taxpayer—paid or not—in ascertaining net income" and to the change made by the Act of 1918 (which we regard as salutary and significant) permitting the deduction of taxes either "paid *or accrued* within the taxable year" in order to clearly reflect income.

The necessity of avoiding the harsh or illogical computations which would result from too strict a rule, particularly under the broader provisions of the Act of 1918, was recognized in the *Woodward* case.

The important thing is that the return should clearly reflect income, as nearly as might be, under the difficulty of applying a tax law to a multitude of taxpayers and under a multitude of different circumstances. In order to achieve a just and proper result so far as is possible, it is not proper to enforce a sharp rule that so-called "accrued" deductions (in several different senses of the word "accrued") have some

relation to so-called "accrued" income (in several different senses of the word "accrued") and that therefore so-called "accrued" deductions have no relation to "income received". There is no such linking of "accrued income" and "accrued deductions" in the 1918 Act as the Government insists upon, nor is there any use of the term "cash disbursements" or any such linking of that term with the term "income received" as the Government insists.

The Government refers in its brief (p. 13) to *Article* 23 of *Regulations* 45 providing:

> "A method of accounting will not, however, be regarded as clearly reflecting income unless all items of gross income and all deductions are treated with reasonable consistency."

The Act of 1918 contained no such provision. But the regulation itself does not require absolute, but only "reasonable" consistency. For the reasons above stated we submit that the contention of the executors is consistent.

The Government also refers (p. 13) to a quotation from page 497 of *Montgomery, Income Tax Procedure,* 1925 Ed., reading:

> "Shortly stated, taxpayers must keep their accounts on a uniform basis—cash or accrual. They must avoid a 'mixed' system."

The author makes this statement in reference to the law of 1924 and quotes *Section* 200 (d) of that law which amplified and changed the form of *Section* 200 of the Act of 1918. The only authority cited by the author

is a ruling of the Board of Tax Appeals which does not sustain the conclusion.

Mutual Benefit Life Ins. Co. v. *Herold,* 198 Fed. 199 (D. C., D. N. J. 1912) decided under the Corporation Tax Law of 1909, and *United States* v. *Christine Oil & Gas Co.,* 269 Fed. 458 (D. C., W. D. La. 1920) decided under the Revenue Act of 1913, which are cited in the brief for the Government (p. 13) hold that under those acts only income actually received was required to be reported and that the Government could not extend the acts to cover as taxable income items which had become due but had not been received. The court in reaching this conclusion in each case, referred to the fact that the section providing for deductions permitted the deduction only of items of expenses, interest and the like, actually paid out, and, therefore, held that it would be unjust to the taxpayer to tax him on income not received. The *Mutual Benefit Life Ins. Co.* case, on which the other case relied as an authority, in reaching this conclusion referred at considerable length to numerous cases holding that taxing acts should be construed in favor of the taxpayer. It is undoubtedly true that apart from this reasoning under the words of the act of 1909, and the act of 1913, taxable income was limited to income received; and we see no reason to object to the court giving this additional reason, except to mention that neither of the cases is a very strong case. The former case was affirmed in *Herold* v. *Mutual Benefit Life Ins. Co.,* 201 Fed. 918, in a brief *per curiam* opinion, the court disapproving of some of the statements made in the lower court, and the holding

in *United States* v. *Christine Oil & Gas Co.* case to the effect that unpaid installments of an installment contract are not income until received has been disputed by the Department of Internal Revenue to this very date, the Department still insisting that such unpaid installments are taxable as income received.

Maryland Casualty Co. v. *United States,* 52 Ct. Clms. 201, cited in the Government's brief (p. 13) was considerably modified in some respects on appeal in 251 U. S. 342. But the Court of Claims and this Court pointed out that the Revenue Act of 1913 expressly limited gross income to that "*received* within the year from all sources" and thereby rendered unnecessary the reasoning referred to in the two cases just referred to, the *Mutual Benefit Life Ins. Co.* case and the *Christine Oil & Gas Co.* case. This Court agreed with the Court of Claims in holding that premiums received by the Casualty Company's agents were received by the company when the money came into the hands of the agents, although not yet transmitted to the home office, and that the Casualty Company must account for this money as "received". The Court of Claims pointed out that the company's books could not be used as a basis; since they reflected only the moneys that had been sent in to the home office and not those in the hands of the agents, and, therefore, did not clearly reflect the net income received. The Casualty Company was attempting to report income received but was leaving out part of the money received.

The Government makes the further statement at page 13 of its brief that the "necessity for consistent

treatment of all items on either one basis or the othe was further developed in *United States* v. *Anderson supra.*" Although that case was decided under a prio act, we do not believe that this Court intended in tha case to lay down the sharp line insisted upon by th Government in this case.

We submit that the clear reflection of income in the case of estates calls for the deduction of taxes which are due and payable, even if unpaid, and that it does not call for the inclusion of income which has accrued and which may never be received by the executor.

IV

THE TEXAS INHERITANCE TAX SHOULD BE PERMITTED AS A DEDUCTION.

The brief for the Government (page 22) concedes that the inheritance tax of $357,739.34 imposed on the estate of Mrs. Gates by the laws of the State of Texas is properly deductible in the year 1919 if deductible from the income of the estate at all. It both accrued and was paid in the year 1919, the year for which it is claimed as a deduction by the executors.

As the Government agrees in its brief (page 8), if "the deduction of the Federal estate tax is disallowed, but the Texas inheritance is held to be deductible, the amount of income tax for 1919 paid by the executors will be found to be too large by the amount of $261,149.72 (R. 46; Finding XVII); and in that event the judgment of the Court of Claims should be reversed with directions to grant judgment to the executors for the amount last stated, less any offsets existing in favor of the United States." On this matter of computation, the appellees have only two things to add: (1) Interest should be allowed from the respective dates of payment of the tax, namely: on one-fourth of the said amount of $261,149.72 from March 15, 1920; on one-fourth from June 15, 1920; on one-fourth from September 15, 1920; and on the remaining one-fourth from December 15, 1920, as was allowed by the Court of Claims on the amount it held should be refunded (R. 43, 44) as to dates of payment. (2) There are no offsets existing in favor of the United States which

apply against this deduction. The offset of $381,931.57 which applied against a recovery under the appellees' first claim, namely: of a deduction for Federal estate tax, and which was allowed by the Court of Claims, was for unpaid income tax for 1920, and is not due to the Government if the Government is successful in its contention that the estate tax should be deducted for the year 1920, and therefore is not an offset against a recovery on account of the Texas inheritance tax. The findings show (R. 44, 45) that if the Government's contention as to the year in which the Federal estate tax is sustained, no income tax whatever is payable with respect to the year 1920. Therefore, there is no offset against the aforesaid sum of $261,149.72 and interest.

As the Government states in its brief (at p. 19) *Keith* v. *Johnson,* in this Court, No. 295, October Term, 1925, argued January 6, 1926, and not yet decided, involved the question whether the New York inheritance tax is deductible by the executors. The right to such a deduction of the New York inheritance tax has been upheld in a number of cases.

United States v. *Perkins,* 163 U. S. 625.
Keith v. *Johnson,* 3 Fed. (2d) 361.
Farmers Loan & Trust Co. v. *United States,* United States District Court, Southern District of New York, November 30, 1925.
Matter of Tilford, United States Board of Tax Appeals, February, 1926.

See

Matter of Law, 204 App. Div. (N. Y.) 590; affirmed 236 N. Y. 607.

The brief of the Government concedes (p. 19) that *"the Texas statute and the New York statute are not unlike."* The inheritance tax law of the State of Texas, which imposed the tax in question upon the estate of Mrs. Gates, was the same in every material respect as the inheritance tax law of New York. This is shown by the following comparative analysis of the material provisions of the law of New York and the law of Texas:

Tax Imposed Upon All Property Passing to Legatees, Devisees or Descendants

Texas	*New York*
Article 7487, Vernon's Sayles' Texas Civil Statutes, Ed. 1914, as amended by laws of Texas, 1917, Chap. 166.	*Section 220 of Article 10 of the Tax Law (Chap. 62, Laws of 1909, as amended, provides:*
"All property within the jurisdiction of this state * * * which shall pass absolutely or in trust by will or by the laws of descent * * * shall upon passing to or for the use of any person" (with certain stated exceptions) "* * * be subject to a tax for the benefit of the state as follows:"	"A tax shall be and is hereby imposed upon the transfer of any tangible property within the state and of intangible property, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations in the following cases * * *" (The section then provides for taxation of transfers "by will or intestate law * * *.")

The Amount of the Tax Dependent Upon the Relationship of the Recipients to the Decedent

Article 7487, Texas Statutes	*Section 221-a of Article 10 of the Tax Law (Chap. 62, Laws 1909 as amended).*
If passing to father, mother, husband, wife or lineal descendant—no tax; if passing to a lineal descendant, brother, sister or lineal descendant of brother or sister—the lowest rate; if passing to an uncle, aunt or lineal descendant of an uncle or aunt—an intermediate rate, and if passing to any other person—the highest rate.	If transfer to father, mother, husband, wife, child, or adopted child—the lowest rate; if transfer to brother, sister, wife and others—an intermediate rate, and if transfer to any other person—the highest rate.

Tax a Lien Upon the Property Passing

Article 7493, Texas Statutes, provides:	*Section 224 of Article 10 of the Tax Law of New York (Chap. 62, Laws 1909 as amended) provides:*
"* * * Said tax shall be a lien upon such property from the death of the decedent until paid, and shall bear interest from such death until paid, unless payment shall be made within six months after such death, in which case no interest shall be charged."	"Every such tax shall be and remain a lien upon the property transferred until paid * * *."

Executor Required to Pay Tax Both in Texas and in New York

Article 7494, Texas Statutes provides:

"If such property be in the form of money, the executor * * * shall deduct the amount of the tax therefrom before paying it to the party entitled thereto; if it be not in the form of money he shall withhold the property until the payment by such party of the amount of tax; in any case the executor * * * shall be liable for the amount of the tax and shall have the right, in case of neglect or refusal after due notice of the party entitled to the property to pay such amount, to sell, at public sale, after due notice to such party, the property, or so much of it thereof as may be necessary. Out of the sum realized on such sale, the executor * * * shall deduct the amount of the tax and the expenses of the sale and shall pay the balance to the party entitled thereto."

Section 224 of Article 10 of the Tax Law of New York (Chap. 62, Laws 1909 as amended) provides that

"the executors * * * of every estate so transferred shall be personally liable for such tax until its payment. Every executor * * * shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator * * *. Any such executor * * * having in charge or interest any legacy or property for distribution subject to such tax shall deduct the tax therefrom and shall pay over the same to the State Comptroller or County Treasurer as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value thereof from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this Article to any person until he shall have collected the tax thereon * * *."

Even the minor provision referred to in the Government's brief as to possible refunds, namely: Article 7500 of the Texas act has a corresponding provision in the New York act (Chapter 62, Laws of 1909, Section 225, as amended) in the following form:

> "If any debts shall be proven against the estate of a decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required by order of the surrogate having jurisdiction, on notice to the tax commission, to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to him by the executor, administrator or trustee, if the tax has not been paid; or if such tax has been paid, the tax commission with the approval of the comptroller shall refund out of the funds in the custody of the comptroller to the credit of such taxes such equitable proportion of the tax."

The Texas inheritance tax law, in the form in which it was at the time of the death of Mrs. Gates is set out in full as *Appendix A* of this brief, including for the sake of completeness several sections omitted from *Appendix B* of the brief for the Government. As stated above there are some differences in language from the New York statute involved in *Keith* v. *Johnson, supra,* but no difference of substance, so far as the deductibility of the tax under the income tax law is concerned.

The brief of the Government (p. 21) refers to the

rulings of the Treasury Department as consistently holding that state inheritance taxes "imposed on the right to receive and computed on each separate share, are deductible by the heir or legatees and not by the estate"; and that the Texas tax has been classified as such a tax. It might have been added, as is the fact, that the New York tax has always been classified by the Treasury in exactly the same category as the Texas tax (*Cum. Bal.* II-1, p. 87), the treatment of these two taxes and of other State inheritance taxes as a group having varied from time to time as we shall show.

The Government's entire statement above quoted is unwarranted praise of the Treasury Department in this respect, and entirely unjustified by the history of the subject. Probably on no point have the regulations of the Bureau of Internal Revenue been so wholly in error or so inconsistent with each other or with the decisions of the Courts.

From 1913 to 1921 the regulations flatly forbade any deduction whatever for State inheritance taxes or Federal estate tax. (R. 45; *Regulations* 45, *Article* 134, until amended in April, 1922). During this period the Government successfully opposed a legatee who sought to deduct the New York inheritance in *Prentiss* v. *Eisner,* 267 Fed. 16 (C. C. A., 2nd Circuit, 1920); *certiorari* refused 254 U. S. 647; the court holding that the legatee could not deduct the tax because it was not paid by him and was taken out before the property became his. This decision was based on the prior decision of *United States* v. *Perkins,* 163 U. S. 625, in which the New York tax was held to have been prop-

erly levied on a legacy to the United States, since the tax was not imposed upon the *United States,* the legatee.

Then this court decided in June, 1921, the case of *United States* v. *Woodward,* 256 U. S. 632, *supra,* holding that the Federal estate tax was deductible. For almost a year after that, the Bureau of Internal Revenue made no change in its regulations and continued to forbid all deductions for State inheritance taxes.

In April, 1922, the Bureau recognized that the decision in *United States* v. *Woodward,* applied to these taxes also, and issued the surprising regulation in lengthy form that taxes on the right to *transmit* by bequest were deductible by executors, but that taxes on the right to *receive* were deductible by legatees. Whether this attempted distinction has any meaning and whether it is a test that can be applied in practice we shall not stop to discuss. In any event a later regulation was issued, holding that both the New York tax and the Texas tax were on the right to receive and therefore deductible by the legatees and not by the executors. This was a surprising ruling because directly and necessarily contrary to *Prentiss* v. *Eisner, supra,* and to *United States* v. *Perkins, supra.* There was no consistency with the previous rulings which forbade any deduction at all, or with the law as already laid down in those two important cases, which held that the tax was not imposed on the legatee. The regulation, soon after its promulgation was disregarded by the courts in *Johnson* v. *Keith,* 294 Fed. 964 (District Court, 1923) and by the Circuit Court of Appeals in *Keith* v. *Johnson,* 3 Fed.

(2nd) 361, from which the appeal now pending and argued before this court was taken. It was also disregarded by the New York courts in *Matter of Law,* 204 App. Div. 590, unanimously affirmed, 236 N. Y. 607, and in *Farmers Loan & Trust Co.* v. *United States, supra.* So much for the argument as to the consistency and importance of the regulation.

The brief of the Government (page 21) makes the further point that *Keith* v. *Johnson* might have been differently or might be differently decided except for binding decisions by the New York courts.

Both *United States* v. *Perkins, supra,* and *Prentiss* v. *Eisner, supra,* were decided *independently of the New York decisions.*

In *United States* v. *Perkins,* this court in holding that the tax was not levied on the United States or its property (the legacy being a bequest to the United States) said at p. 668 (of 163 U. S.):

> "In this view, the so called inheritance tax of the State of New York is in reality a limitation upon the power of a testator to bequeath his property to whom he pleases; a declaration that, in the exercise of that power, he shall contribute a certain percentage to the public use; in other words, that the right to dispose of his property by will shall remain, but subject to a condition that the State has a right to impose. Certainly, if it be true that the right of testamentary disposition is purely statutory, the State has a right to require a contribution to the public treasury before the bequest shall take effect. Thus the tax is not upon the property, in the ordinary sense of the term, but upon the right to dispose

> of it, and it is not until it has yielded its contribution to the State that it becomes the property of the legatee. This was the view taken of a similar tax by the Court of Appeals of Maryland in State *v.* Dalrymple, 70 Maryland 294, 299 * * *."

The court having reached its conclusion independently of any New York case, then went on to point out (at p. 629 of 163 U. S.) that this nature of the tax had been upheld by the courts of New York and several other States. The court said further at p. 630:

> "We think that it follows from this that the act in question is not open to the objection that it is an attempt to tax the property of the United States, since the tax is imposed upon the legacy before it reaches the hands of the government. The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax, and it is only upon this condition that the legislature assents to a bequest of it."

In *Prentiss* v. *Eisner,* at p. 20 (of 267 Fed.) Judge Rogers in delivering the opinion of the Circuit Court of Appeals, after quoting from *United States* v. *Perkins, supra,* said:

> "We find no case in the subsequent decisions of the New York Court of Appeals in which that court disclaims the construction placed by the Supreme Court of the United States on the New York decisions, or in any way qualifies or overrules the proposition that the 'tax' under the New York law is not one upon the property, but

is one upon the right to dispose of it by will or by descent. In the absence of such a decision it seems to be our duty to follow the law as it is laid down in the Perkins Case, unless there can be found in the New York statute in force when the present tax was laid some substantial difference from the statute in force when that case was decided in the particular now being considered. If such a difference exists, we have failed to detect it, and learned counsel have failed to point out in what it consists."

He said further at p. 21:

> "We admit that the New York cases on the subject of taxable transfers are confused and not always clear and consistent. *But, until the New York Court of Appeals authoritatively states that the law of New York is not what the Supreme Court of the United States said it was in the Perkins case,* this court has no alternative but to hold that the New York Transfer Tax Act does not impose a tax on a legatee's right of succession which is deductible in her income tax return." (Italics ours.)

Therefore, it is clear that the holdings that the legatee is not the person upon whom the tax is imposed, but that it is imposed upon the estate do not depend upon any peculiarity of the New York decisions, but depend upon the fundamental nature of an inheritance tax, as recognized independently of the decisions of the State courts.

There is accordingly no distinction between the right to deduct the Texas inheritance tax and the right to deduct the New York tax in *Keith* v. *Johnson,* now before this court.

Conclusion.

The appellees' first cause of action, based on th deduction of the Federal estate tax should be sustaine and the judgment should be affirmed.

If the appellees' first cause of action is not sus tained, but the second cause of action, based on the de duction of the Texas inheritance tax, is sustained, th judgment should be for the sum of $261,149.72, wit interest on one-fourth thereof from the 15th day o March, 1920, on one-fourth thereof from the 15th da of June, 1920, on one-fourth thereof from the 15th da of September, 1920, and on the remaining one-fourt from the 15th day of December, 1920.

Respectfully submitted,

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APPENDIX A

TEXAS INHERITANCE TAX LAW

Vernon's Sayles' Texas Civil Statutes [1914 ed.] as amended by Act of 1917, chapter 166)

CHAPTER TEN

Inheritance Tax

Article 7487. *Property subject to the tax.*—All property within the jurisdiction of this state, real or personal, corporeal or incorporeal, and any interest therein, whether belonging to inhabitants of this state or not, which shall pass absolutely or in trust by will, or by the laws of descent of this or any other state, or by deed, grant, sale or gift made or intended to take effect in possession or enjoyment after the death of the grantor or donor, shall upon passing to or for the use of any person except the father, mother, husband, wife or direct lineal descendants of the testator, intestate, grantor or donor, or any public corporation or charitable, educational or religious organization within this state when such bequest, gift or devise is to be used for charitable, educational or religious purposes within this state, be subject to a tax for the benefit of the state, as follows:

1. If passing to or for the use of a lineal ascendant or a brother or sister, or a lineal descendant of a brother or sister, the tax shall be two per cent on any value in excess of two thousand dollars, and not ex-

ceeding ten thousand dollars; two and one-half per cent of any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; three per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars; three and one-half per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars; four per cent on any value in excess of one hundred thousand dollars, and not exceeding five hundred thousand dollars; and five per cent on any value in excess of five hundred thousand dollars.

2. If passing to or for the use of an uncle or aunt, or a lineal descendant of an uncle or aunt of the decedent, the tax shall be three per cent on any value in excess of one thousand dollars, and not exceeding ten thousand dollars; four per cent on any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; five per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars; six per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars; seven per cent on any value in excess of one hundred thousand dollars, and not exceeding five hundred thousand dollars, and eight per cent on any value in excess of five hundred thousand dollars.

3. If passing to or for the use of any other person, natural or artificial, the tax shall be four per cent of any value in excess of five hundred dollars, and not exceeding ten thousand dollars; five and one-half per cent on any value in excess of ten thousand dollars,

and not exceeding twenty-five thousand dollars; seven per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars; eight and one-half per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars; ten per cent on any value in excess of one hundred thousand dollars, and not exceeding five hundred thousand dollars, and twelve per cent on any value in excess of five hundred thousand dollars. (Acts 1907, p. 496, Sec. 1.)

ART. 7488. *Property passing in two or more estates.* If the property passing as aforesaid shall be divided into two or more estates, as an estate for years or for life and a remainder, the tax shall be levied on each estate or interest separately according to the value of the same at the death of the decedent. The value of estates for years, estates for life, remainders and annuities shall be determined by the "Actuaries' Combined Experience Tables," at four per cent compound interest.

ART. 7489. *Property bequeathed to executor or trustee in lieu of commission, taxed when.*—If a testator bequeaths or devises to his executor or trustee property in lieu of the latter's commission, the value of such property in excess of reasonable compensation, as determined by the county judge on his own motion, or on the application of any officer on behalf of the state, shall be subject to taxation under this chapter.

ART. 7490. *Inventory to be filed when; penalty.*—Every executor, administrator and trustee of the estate

of a decedent leaving property subject to taxation under this chapter, whether such property passes by will or by the laws of descent or otherwise, shall, within three months after his appointment, make and file an inventory thereof in the county court having jurisdiction of the estate of the decedent. Any executor, administrator or trustee, refusing or neglecting to comply with the provisions of this article, shall be liable to a penalty not exceeding one thousand dollars, to be recovered in an action brought in behalf of the state by the district or county attorney upon notice from the judge of the county court.

ART. 7491. *Appointment of person to sue for and collect tax; compensation; reports; appointment of administrators.*—The Comptroller of Public Accounts of the State of Texas is hereby authorized and empowered, and it is made his duty to appoint and contract with some suitable person or persons whose duty it shall be to look specially after, sue for and collect the taxes provided by this chapter; such person in no event to receive under such contract more than ten (10) per cent of the amount of such taxes collected hereunder, as compensation. It shall be the duty of such person, so contracted with, to make written report to the County Judge of each county in which he may be appointed and employed to assist in the enforcement of this law, of each estate upon which such tax may be due, or may become due, as soon as possible after the death of any person owning such estate. Such report shall state the probably [sic] value of such estate, its character and location, if known, and the names of the persons known to be interested therein.

The amount of compensation due such person shall be paid by the Collector of taxes out of the taxes collected on property belonging to such estate, and such payment shall be deducted from said taxes by said Collector and reported to the Comptroller.

It shall be the further duty of such person to aid in every possible way in the collection of such taxes.

It shall be the duty of the County Judge of said county upon his own motion or petition of such appointee of said Comptroller, to appoint an administrator of every estate subject to taxation under the provisions of this chapter where no application for letters testamentary or of administration thereon is made within three (3) months after the death of the person owning such estate taxable hereunder. The person appointed by the said Comptroller may represent the State in any proceeding necessary under the provisions of this chapter to enforce the collection of such taxes but without other compensation than as provided in his original employment. (Acts 1907, p. 496; Act March 30, 1917, Ch. 166, Sec. 1.)

ART. 7492. *Appraisers appointed; notice to be given, etc.*—Said tax shall be assessed upon the actual or market value of the property. The judge of the county court having jurisdiction of the estate of the decedent shall, as often as and whenever occasion may require, appoint two competent disinterested persons as appraisers to fix the value of property subject to said tax. The appraisers, being first sworn, shall forthwith give notice to all persons known to have a claim or interest in the property to be appraised, including the executor, administrator or trustee and the

collector of taxes of the county, of the time and place when they will appraise the same. At such time and place they shall appraise such property at its actual or market value at the time of the death of the decedent, and shall thereupon make report thereof in writing to said county judge, who shall file such report. Each appraiser shall be paid, on the certificate of the county judge, two dollars for each day employed in such appraisal, together with his actual necessary expenses incurred therein, which payments shall be made by the collector of taxes out of any moneys in his hands received under this chapter; provided, however, that upon the agreement of the parties interested to dispense with the appointment of appraisers, the county judge shall himself appraise the property and make and file a report thereof. If the same decedent shall leave property subject to this tax to more than one person, a separate appraisal and report shall be made for the property of each person.

ART. 7493. *County judge to regulate tax.*—Immediately upon the filing of the report of the appraisement, the county judge shall calculate and determine the amount of tax due on such property under this chapter, and shall in writing certify such amount to the collector of taxes, to the executor, administrator or trustee, and to the person to whom or for whose use the property passes. Said tax shall be a lien upon such property from the death of the decedent until paid, and shall bear interest from such death until paid, unless payment shall be made within six months after such death, in which case no interest shall be charged.

ART. 7494. *Property withheld until tax paid.*—If such property be in the form of money, the executor, administrator or trustee shall deduct the amount of the tax therefrom before paying it to the party entitled thereto; if it be not in the form of money, he shall withhold the property until the payment by such party of the amount of tax; in any case the executor, administrator or trustee shall be liable for the amount of the tax and shall have the right, in case of neglect or refusal after due notice of the party entitled to the property to pay such amount, to sell, at public sale, after due notice to such party, the property, or so much thereof as may be necessary. Out of the sum realized on such sale, the executor, administrator or trustee shall deduct the amount of the tax and the expenses of the sale, and shall pay the balance to the party entitled thereto.

ART. 7495. *Tax charged on real estate, when.*—Whenever any legacy subject to said tax shall be charged upon or payable out of real estate, the heir or devisee, before paying the legacy, shall deduct the amount of the tax therefrom, and pay the amount so deducted to the executor, administrator or trustee; the amount of the tax shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor or trustee in the same manner as the payment of the legacy itself could be enforced.

ART. 7496. *Tax paid, when.*—All taxes received under this act by any executor, administrator or trustee, shall be paid by him within thirty days thereafter to the collector of taxes of the county whose county court has jurisdiction of the estate of the decedent.

Upon such payment, the collector shall make duplicate receipts thereof; he shall deliver one to the party making payment, the other he shall send to the comptroller of public accounts, who shall charge the collector with the amount thereof, and shall countersign and affix his seal of office to such receipt and transmit same to the party making payment.

ART. 7497. *Collector to sue for, when.*—In case such tax shall not be paid to the collector of taxes within six months after the county judge has notified the amount thereof as hereinbefore provided, the collector shall commence an action to recover the amount of such tax against the executor, administrator or trustee, and the party to whom or for whose use the property has passed; provided, that the county judge may by certificate to the collector extend such time of payment whenever the circumstances of the case require.

ART. 7498. *Collector pays to state treasurer.*—The collector of taxes of each county shall, on or before the fifteenth day of each month, pay to the state treasurer all taxes received by him under this law before the first day of that month, deducting therefrom all lawful disbursements made by him under this act, and also his compensation at the rate of one per cent of all taxes collected under this act.

ART. 7499. *Tax deposited to credit of general fund.*—The moneys received by the state treasurer under this chapter shall be deposited in the state treasury to the credit of the fund now there existing and known as the general revenue fund.

ART. 7500. *Tax refunded, when.*—Whenever any debts shall be proven against the estate of a decedent after the distribution of property on which the tax has been paid, and a refund is made by the distributee, a due proportion of the tax so paid shall be repaid to him by the executor, administrator or trustee, if still in his hands, or by the collector of taxes, if it has been paid to him. The collector shall pay such sums upon the order of the county judge out of any money in his possession under this law; and the comptroller of public accounts shall credit the collector with all sums so paid out by him.

ART. 7501. *Final account not allowed until tax is paid.*—No final account of an executor, administrator or trustee shall be allowed by the county judge, unless such account shows and said judge finds that all taxes imposed under this law on any property or interest passing through his hands as such have been paid; and the receipt of the collector of taxes for such taxes shall be the proper voucher for such payment.

ART. 7502. *Appointment of administrator dispensed with.*—If for any reason administration of the estate of a decedent, leaving property subject to taxation under this law, shall not be necessary in this state, except in order to carry out the provisions of this chapter, it shall be in the discretion of the county judge, upon the filing of a satisfactory inventory of the taxable property by the trustee or owner, to dispense with the appointment of an administrator. Upon the filing of such inventory, the appraisement and other proceedings required by this chapter shall be had as in other cases.

SUPREME COURT OF THE UNITED STATES.

No. 470.—October Term, 1925.

The United States, Appellant, *vs.* John J. Mitchell et al., as Executors, etc.	Appeal from the Court of Claims.

[April 12, 1926.]

Mr. Justice Butler delivered the opinion of the Court.

November 28, 1918, Dellora R. Gates, a resident of Texas, died testate; and, January 6, 1919, the County Court of Jefferson County granted letters testamentary to appellees. The federal estate tax accrued one year after her death; and, November 26, 1919, the executors made a return showing $2,927,762.64 due the United States under the Revenue Act of 1916.[1] They did not pay any part of the tax in 1919, but paid $1,000,000 February 25, 1920, and the balance May 27, of that year. Under the Revenue Act of 1918,[2] the executors, March 14, 1920, made an income tax return for the estate for 1919, showing a balance due of $905,225.73. If the estate tax had been deducted there would have been no taxable income for that year. In 1919, the executors paid an inheritance tax of $357,739.34, which was imposed and became due in that year under the laws of Texas.[3] If that amount had been deducted, the income tax of the estate for that year would have been reduced by $261,149.72. When the return was made, the rulings and regulations of the Commissioner of Internal Revenue and the Secretary of the Treasury did not permit the deduction of the federal estate tax or the state inheritance tax; and for that reason the executors did not claim that either should be deducted, and

[1]Section 201, Act of September 8, 1916, c. 463, Title II, 39 Stat. 756, 777, as amended March 3, 1917, c. 159, Title III, 39 Stat. 1000, 1002, and October 3, 1917, c. 63, Title IX, 40 Stat. 300, 324.

[2]Act of February 4, 1919, c. 18, Title II, §§ 210, 214, 219, 40 Stat. 1057, 1062, 1067, 1071.

[3]Vernon's Sayles' Texas Civil Statutes, 1914 Ed., as amended by c. 166, Laws of 1917, Art. 7487-7502.

paid the amount shown by the return. After the decision of th court in *United States* v. *Woodward* (1921), 256 U. S. 632, tl executors filed a claim for refund which was denied. The Burea of Internal Revenue offered to allow them to deduct the esta tax paid in 1920 from gross income, in calculating the income ta on the estate, for that year. The executors refused to do so an brought this action in which they seek to recover the full amou of the 1919 income tax paid. And, in the event that the esta tax shall be held not deductible, they seek to recover $261,149.7 the amount by which the income tax would have been lessened i the Texas inheritance tax paid in that year had been deducte The Court of Claims held the estate tax deductible, and gav judgment for the full amount.

It is established that, in calculating the income tax on an esta during administration under the Revenue Act of 1918, § 214(a) (3), federal estate taxes are deductible. *United States* v. *Woo ward, supra.* But the question presented by this case is whethe in calculating the income tax for 1919, the executors were e titled to deduct from the gross income actually received in tha year the estate tax which was not paid until 1920. The executo maintain that under § 214(a) (3) estate taxes are deductible paid or if accrued within the taxable year; and that the esta tax, accruing in 1919 and paid in 1920, was deductible from gro income actually received in 1919. When regard is had to other pr visions of the Act, it is clear that this contention is not admissibl Section 200 declares that "paid" means "paid or accrued," an that the phrase "paid or accrued" shall be construed accordin to the method of accounting upon the basis on which the net i come is computed under § 212. And § 212 provides that net incom shall be computed on the basis of the taxpayer's annual accou ing period in accordance with the method of accounting regular employed in keeping the books of the taxpayer (*United States Anderson*, 269 U. S. —); but if no such method has been e ployed, or if the method employed does not reflect the i come, the computation shall be made upon a basis and in manner that, in the opinion of the Commissioner, does clear reflect the income. The return shows that it was made on t basis of income actually received in 1919. This indicates that t accounts were kept on the basis of actual re[illegible]ipts and disbur ments, and there is nothing in the record to s[illegible]ow that any oth

method was employed. The burden is on the executors to establish the invalidity of the tax. *United States* v. *Anderson, supra.* They have not shown that their books were kept on the accrual basis. Assuming, as we must, that the accounts of the estate were kept on the basis of actual receipts and disbursements, the executors were required to make return on that basis. Notwithstanding the option given taxpayers, it is the purpose of the Act to require returns that clearly reflect taxable income. That purpose will not be accomplished unless income received and deductible disbursements made are treated consistently. It was not the purpose of the Act to permit gross income actually received to be diminished by taxes or other deductible items disbursed in a later year, even if accrued in the taxable year. It is a reasonable construction of the law that the same method be applied to both sides of the account.

Appellees contend that *United States* v. *Woodward, supra,* governs this case. The provisions of the Revenue Act of 1916 and of the Revenue Act of 1918 which are here involved were considered in that case. The cases are much alike. Woodward died December 15, 1917, and the estate tax became due one year later, but it was not paid until February 8, 1919. It may be assumed that the return for 1918 included only the income actually received in that year. The rules and regulations then in force did not permit the deduction of the estate tax. If that deduction had been made there would have been no taxable income. The executors paid the tax under duress, and brought suit for the amount paid. The Court of Claims held them entitled to recover, and this court affirmed the judgment. The question considered and decided was whether in ascertaining net taxable income the estate tax was deductible. The opinion referred to the provision which imposes the tax upon incomes of estates and that part of § 214 which authorizes the deduction of "taxes paid or accrued within the taxable year imposed (a) by the authority of the United States, except income, war-profits and excess-profits taxes," and, in discussing the clause defining the deductions permitted to be made, the court said (p. 634), "The words of its major clause are comprehensive and include every tax which is charged against the estate by the authority of the United States. The excepting clause specifically enumerates what is to be excepted. The implication from the latter is that the taxes which

it enumerates would be within the major clause were they not expressly excepted, and also that there was no purpose to except any others. Estate taxes were as well known at the time the provision was framed as the ones particularly excepted. . . . Thus their omission from the excepting clause means that Congress did not intend to except them. The Act of 1916 calls the estate tax a 'tax' and particularly denominates it an 'estate tax'. This court recently has recognized that it is a duty or excise and is imposed in the exertion of the taxing power of the United States. *New York Trust Co.* v. *Eisner, ante,* 345." The question decided concerned the character of the exaction; that is, whether the so-called federal "estate taxes" were "taxes" within the meaning of that word as used in the clause of § 214 quoted. The government did not contend that, if deductible at all, the estate taxes could not be deducted in that case because the return was made on the basis of income actually received in 1918, whereas the estate tax, accruing in that year, was not paid until 1919. That question was not presented to the court for decision, and no such question was considered or decided. It is not to be thought that a question not raised by counsel or discussed in the opinion of the court has been decided merely because it existed in the record and might have been raised and considered. *Webster* v. *Fall,* 266 U. S. 507, 511. The *Woodward* case does not support the contention that, where the estate income tax return is made on the basis of income actually received in the taxable year, there may be deducted the estate tax accruing in that year but paid in the following year.

It remains to be considered whether, in calculating the tax on the income of the estate, the inheritance tax imposed by the law of Texas and paid by appellees in 1919 is deductible from the gross income received in that year. That law provides that all property, which shall pass by will or by the laws of descent, shall upon passing to or for the use of any person (with certain exceptions) be subject to a tax for the benefit of the State. We are of opinion that, in respect of the matter under consideration, the Texas inheritance tax law cannot be distinguished from the New York transfer tax law; and that under *Keith* v. *Johnson,* decided this day, the executors are entitled to have the inheritance tax paid in 1919 deducted from the income of the estate received in that year.

Judgment reversed.